



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 12, 2006

Ms. Ann Greenberg
Walsh, Anderson, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2006-14584

Dear Ms. Greenberg:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 266619.

The Lake Travis Independent School District (the "district"), which you represent, received three requests from the same requestor for (1) all electronic documents created during or as a result of a closed session of the district school board on May 8, 2006, (2) all billing statements, invoices, and receipts for legal services provided on behalf of the district, its employees, or board members from July 15, 2006 to August 15, 2006, and (3) copies of all payments made to Bracewell & Giuliani, LLP from January 1, 2004 to August 31, 2006. You state that the district has released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.136 of the Government Code and privileged under Rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments stating why requested information should or should not be released).

Initially, we must address the district's obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(a), (b). You inform us, and provide documentation showing, that the district received the present requests for information on September 18, 2006. Accordingly, you were required to submit a request for a ruling from this office by

October 2, 2006. Although you contend that the district attempted to mail the request for a ruling on October 2, 2006, you concede that the district failed to add postage to the mail at that time. *See id.* at § 552.308 (request is timely if sent by first class United States mail or common or contract carrier properly addressed with postage or handling charges prepaid and bears post office cancellation mark or receipt mark of the carrier indicating a time within that period). You did not submit the district's request for a ruling to this office until October 4, 2006. Consequently, we find that the district failed to comply with the procedural requirements of section 552.301. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977).

Although you raise sections 552.103 and 552.107 of the Government Code and Texas Rule of Evidence 503, these exceptions and this rule are discretionary in nature. They serve only to protect a governmental body's interests and may be waived. As such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 12 (2002) (attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 663 at 5 (1999) (governmental body may waive sections 552.103 and 552.107); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the district may not withhold the submitted information pursuant to section 552.103, section 552.107 or rule 503. Because sections 552.101 and 552.136 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider the district's arguments against disclosure of the requested information under these sections.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is protected by other statutes. Section 551.104(c) of the Open Meetings Act, chapter 551 of the Government Code, provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.*

§ 551.104(c). The district is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101). Thus, such information cannot be released to a member of the public in response to an open records request. *See id.* You seek to withhold a tape recording of a closed meeting held by the district on May 8, 2006. You state that the “[r]equestor does not otherwise have a right to access the tape because this record relates to a citizen complaint and is not an educational record of the requestor’s child.” Based on your representations, we agree that the district must withhold the tape recording from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

Next, we address your claim under section 552.136 of the Government Code, which states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. In accordance with section 552.136 of the Government Code, the district must withhold the bank account numbers you have marked at Tab 3.

In summary, the district must withhold the requested tape recording from public disclosure under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code. The district must also withhold the bank account numbers you have marked at Tab 3 under section 552.136 of the Government Code. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body

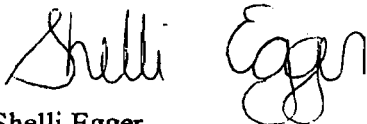
will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Shelli Egger
Assistant Attorney General
Open Records Division

SE/sdk

Ref: ID# 266619

Enc. Submitted documents

c: Mr. David Lovelace
[REDACTED]
Austin, Texas 78734
(w/o enclosures)