



## Office of the Attorney General

State of Texas

October 19, 1998

DAN MORALES

ATTORNEY GENERAL

Mr. Jeffrey Brannen  
Canterbury, Stuber, Elder, Gooch & Surrant  
5400 LBJ Freeway, Suite 1300  
Dallas, Texas 75240

OR98-2454

Dear Mr. Brannen:

On behalf of the McAllen Independent School District (the "school district") you ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118790.

The school district received two requests for information from the same requestor. The first request for information, dated June 29, 1998,<sup>1</sup> sought various categories of information concerning legal expenses of the school district and planned roof repairs. The requestor's second letter, dated July 16, 1998, seeks six categories of information concerning travel expenditures and school district expenses. In response to the requests, you submit to this office for review the information which you assert is responsive. You claim that the requested information is excepted from disclosure under sections 552.102, 552.103, 552.107 and 552.111 of the Government Code. We have considered your claimed exceptions and arguments and have reviewed the information submitted.

In your letter, dated July 29, 1998, requesting a ruling from this office, you assert that the first request "appears to be less an Open Records Act request and more of simply a request for information. Out of an abundance of caution it is sent to you with the notation that the same exceptions apply to it as apply to the July 16 letter."<sup>2</sup> Based on a review of the correspondence between the requestor, the school district, and your office, we have

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<sup>1</sup>In your letter to this office, dated July 29, 1998, requesting a ruling you refer to the first request for information, as the "letter dated June 30, 1998," however, we assume this reference is simply to the requestor's June 29, 1998 letter, which apparently was received by the school district on June 30, 1998. Hereinafter, we will refer to the June 29, 1998 letter as the first request, and the July 16, 1998 letter as the second request.

<sup>2</sup>The Open Records Act does not require a governmental body to answer factual questions or perform legal research. Open Records Decision Nos. 561 (1990), 555 (1990), 379 (1983), 347 (1982). However, a governmental body does have a duty to make a good faith effort to relate a request for information to information the governmental body holds. Open Records Decision No. 561 at 8 (1990).

determined that although your office declined to respond to the first request, the school district did respond to the questions on August 13, 1998. However, we note that section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the *tenth business day* after the date of receiving the written request. According to your submissions, the school district received the first request for information on June 30, 1998. However, neither you nor the school district requested a decision from this office until July 29, 1998, more than ten *business days* after the requestor's written request. Therefore, we conclude that the school district failed to meet its ten-day deadline for requesting an opinion from this office for the first request.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. Of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982); Gov't Code § 552.302. The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Upon review of your arguments and claimed exceptions against disclosure of the information, we conclude you have not shown a compelling interest for overcoming the presumption that the information requested in the first request is public. *See* Open Records Decision No. 473 (1987). Thus, you may not rely upon any of the claimed exceptions to withhold the information requested in the first request. The school district, therefore, must release any responsive information.

We next address your claimed exceptions as for the information requested in the second request.<sup>3</sup> To show that section 552.103(a) is applicable, the school district must demonstrate that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. Therefore, the governmental body must meet both prongs of this test for information to be excepted under 552.103(a). The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. You state that [t]he litigation has resulted in a Judgment for which a Notice of Appeal has been filed," by the school district. After reviewing the submitted material, we find that litigation is pending. However, you have not demonstrated how the information requested by the second request relates to the pending litigation. Therefore, we conclude that section 552.103 is not applicable to the information sought by the second request.

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<sup>3</sup>We note that it is not clear to this office and you did not explain how most of the claimed exceptions apply to the submitted records. The Government Code places on the custodian of records the burden of proving that records are excepted from public disclosure. Attorney General Opinion H-436 (1974).

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. Section 552.107(1) excepts information from disclosure if:

[I]t is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

When invoking this exception, the governmental body bears the burden of explaining how the particular information requested constitutes either a client confidence or a communication of legal advice or opinion. *See, e.g.*, Open Records Decision No. 589 (1991). In this instance, you have not shown how this exception applies to the requested information. Therefore, we conclude that the submitted information may not be withheld pursuant to section 552.107(1).

*Section 552.111 of the Government Code excepts from required public disclosure:*

An interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency.

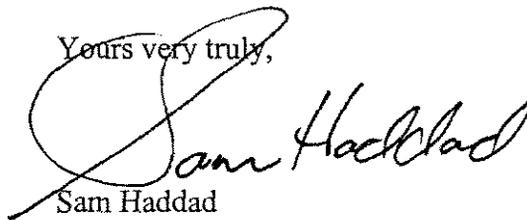
This exception applies to a governmental body's internal communications consisting of advice, recommendations, or opinions reflecting the policymaking process of the governmental body at issue. *See* Open Records Decision No. 615 (1993). An agency's policymaking processes do not encompass internal administrative and personnel matter. *See id.* In this instance, you have not shown how this exception applies to any of the requested information. Therefore, we conclude that the information responsive to the second request may not be withheld pursuant to section 552.111.

Finally, we consider whether any of the requested information must be withheld under section 552.102 of the Government Code. Section 552.102(a) protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as that of the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). We have examined the submitted information and we are not aware of any law that makes the requested information confidential, nor do you raise any such law. Accordingly, we conclude the school district may not withhold the submitted information based on either section 552.101 or 552.102 of the Government Code. *See* Open Records Decision No. 455 (1987).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous

determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/ch

Ref.: ID# 118790

Enclosures: Submitted documents

cc: Mr. Juan Vega  
Vega Roofing Company  
Rt. 4, Box 2165  
McAllen, Texas 78504.  
(w/o enclosures)