



January 5, 2001

Ms. Laura E. Enriquez-Guerra  
Records Management Specialist  
Ysleta Independent School District  
9600 Sims Drive  
El Paso, Texas 79925-7225

OR2001-0037

Dear Ms. Enriquez-Guerra:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 142949.

The Ysleta Independent School District (the "district") received a written request for "all statements made, affidavits taken, and any other documentation generated, by your office, in preparing, and sending of, your suspect letter, dated October 3, 2000." You have submitted to this office as responsive to the request three handwritten statements regarding an incident that allegedly occurred on district property. You contend that the requested information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code.

Under the Act, all information held by governmental bodies is open to the public unless the information falls within one of the Act's specific exceptions to disclosure. The Act places on the governmental body the burden of proving that records are excepted from public disclosure. *See* Gov't Code § 552.301(e)(1)(A); Attorney General Opinion H-436 (1974). If a governmental body fails to claim an exception or to explain how an exception applies to the requested information, the exception is ordinarily waived unless the information is deemed confidential under the Act. *See* Gov't Code § 552.302; Attorney General Opinion JM-672 (1987). The Act does not require that this office raise and consider exceptions that the governmental body has not raised.

You contend that the requested information is excepted from required public disclosure under sections 552.101, 552.107, and 552.111 of the Government Code because “[t]he requestor stated in his letter he intends to pursue legal action against the District.” This statement does not comport with the requirements of section 552.301(e)(1)(A). You have not demonstrated, nor is it apparent to this office, that any portion of the information at issue is deemed confidential by law for purposes of section 552.101.<sup>1</sup> The submitted statements do not consist of a privileged communication under the attorney-client privilege as incorporated into section 552.107(1). Nor do the statements consist of advice, opinion, or recommendation intended for use in the district’s policymaking process. *See* Gov’t Code § 552.111; Open Records Decision No. 615 at 5 (1993). We therefore conclude that you have not met your burden of establishing the applicability of the exceptions you raised. Accordingly, the district must release the requested information in its entirety.

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, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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).

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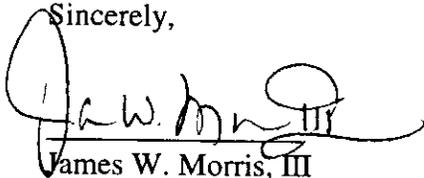
<sup>1</sup>Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

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 Department of Public 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 General Services Commission 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,

A handwritten signature in black ink, appearing to read "James W. Morris, III". The signature is written in a cursive style with a large initial "J" and a prominent "III" at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/RWP/seg

Ref: ID# 142949

Encl. Submitted documents

cc: Mr. Robert S. Huscroft, Sr.  
10305 Darin Road  
El Paso, Texas 79925-1611  
(w/o enclosures)