



February 21, 2001

Ms. Bertha Bailey Whatley, Attorney
Fort Worth Independent School District
100 N. University Drive
Fort Worth, Texas 76107

OR2001-0637

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144437.

The Fort Worth Independent School District ("FWISD") received a request for,

1. the name of driver of school bus number W305, 11:15 a.m. of June 19, 1992;
2. the names of individuals driving district school buses numbered "379-237" on June 19, 1992 during district hours;
3. the accident reports involving requestor and school bus number W305 on June 19, 1992 at approximately 11:15 a.m.;
4. the accident reports involving driver identified in item 1;
5. all criminal, civil, and other complaints involving driver identified in item 1;
6. the "evaluation history" of driver identified in item 1;
7. district policy statements and Education Code exemptions regarding liability related to district motor vehicles;
8. "pre-employment" medical or psychological evaluation results of driver identified in item 1;
9. June 19, 1992 schedules of buses "W305" and "379-237"; and
10. maintenance records for bus "W305" for year prior to June 19, 1992.

In response to this request, you have provided the following information to this office for inspection:

1. letter from the district to the requestor dated October 30, 2000;
2. letter from State Farm Insurance Companies to the requestor, dated October 23, 2000; and
3. driver's confidential accident report, signed by the requestor June 22, 1992.

This decision addresses only the items which you have submitted to this office for review.

You do not indicate that the submitted records are a representative sampling of the information the district seek to withhold from the requestor. Nor do we consider the submitted records to be representative of the requested records. Consequently, responsive information which you have not provided for our inspection, should it exist, must be released to this requestor. *See* Gov't Code §§ 552.301, 302, 352. If you have such information and believe it to be confidential and that it may not lawfully be released, you must challenge this ruling in court as outlined below. We now address the information which you have provided for our review.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You do not provide any argument in support of your contention that the responsive information is excepted from required public disclosure by this provision, and there is no indication on the face of the submitted information that it is confidential. Therefore, we conclude that none of the submitted information may be withheld under section 552.101 of the Government Code.

Section 552.103(a) of the Government Code, excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. However, absent special circumstances, where the opposing party to the anticipated litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Here, the requestor, who is the opposing party in anticipated litigation, has had access to all of the submitted information. Neither the documents themselves nor your comments suggest that special circumstances exist that warrant withholding this information. We conclude that none of the submitted information may be withheld under section 552.103 of the Government Code.

In conclusion, all of the submitted information must be released to the requestor. 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).

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 144437

Encl: Submitted documents

cc: Mr. Connell Spain
2615 Whitehurst Drive
Fort Worth, Texas 76133
(w/o enclosures)