



June 12, 2001

Mr. Clay T. Grover
Feldman & Rogers, L.L.P.
Coastal Banc Plaza
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2001-2480

Dear Mr. Grover:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148337.

The Pasadena Independent School District (the “district”), which you represent, received a request for a copy of the School Food Service Software Program currently being used by the district, as well as the source code and any printed or electronic supporting documentation or manuals. You claim that the requested information is not “public information” under section 552.002 of the Government Code. You also advise this office that the requested information may involve the proprietary or property interests of Information Transit Systems (“ITS”). You have submitted a copy of a letter notifying ITS about the request as required by section 552.305(d).¹ We have not, however, received any comments from ITS. We have considered your arguments and reviewed the submitted information.

You argue that the requested computer program, source code, and documentation does not qualify as “public information” under the Public Information Act (the “Act”). See Gov’t Code § 552.002 (defining “public information”). In Open Records Decision No. 581 (1990), this office determined that certain computer-related information, such as *source codes* and other *computer programming*, that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property is not the kind of information

¹See Gov’t Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov’t Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

made public under section 552.021 of the Government Code. In this instance, we understand the requestor seeks the same categories of information at issue in Open Records Decision No. 581, the software program, source code, and documentation, rather than the information maintained in a computer program. Therefore, we agree that the requested information is not subject to the Act, and the district need not release this information.

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,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 148337

Enc: Submitted documents

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