



November 8, 2001

Ms. Leticia D. McGowan
School Attorney
Dallas Public Schools
3700 Ross Avenue, Box 74
Dallas, Texas 75204-5491

OR2001-5167

Dear Ms. McGowan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154568.

The Dallas Independent School District (the "district"), which you represent, received a request for records pertaining to an employee of the district, including his personnel file and information relating to an investigation involving the employee. You inform this office that there are no responsive videotapes, recordings, or legal notes. Chapter 552 of the Government Code does not require a governmental body to disclose information that did not exist when the request for information was received. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). You state that information responsive to parts d, f, g, and h of the request will be released to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you raise and have reviewed the information you submitted.

We first note that the information at issue falls within the scope of section 552.022 of the Government Code. Section 552.022 provides in relevant part that

¹As we are able to make a determination under section 552.101, we do not address section 552.135, formerly section 552.131, "Exception: Certain Information Held by School District," which was renumbered by the Seventy-seventh Legislature. The amendment was not substantive. *See Act of May 22, 2001, 77th Leg., R.S., ch. 1420, § 21.001(54), 2001 Tex. Sess. Law Serv. 3970, 4309 (to be codified as Gov't Code § 552.135).*

the following categories of information are public information and not excepted from required disclosure under this chapter *unless they are expressly confidential under other law*:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1) (emphasis added). In this instance, the information at issue comprises a completed investigation. Therefore, the information must be released under section 552.022(a)(1), unless it is expressly confidential under other law or excepted from disclosure under section 552.108.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. You raise section 552.101 in conjunction with section 261.201 of the Family Code. Chapter 261 of the Family Code governs investigations of suspected child abuse or neglect. Section 261.201 provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You indicate that the documents requested are reports, communications, and working papers used or developed in an investigation of alleged child abuse. These documents indicate that the investigation was conducted by the Special Investigations Division of the district's Safety and Security Department. We note that section 261.301 of the Family Code authorizes a local law enforcement agency to conduct a child abuse investigation. *See id.* § 261.301(c). We assume, for purposes of this ruling, that the district's Safety and Security Department constitutes the appropriate local law enforcement agency with authority to conduct this investigation. You do not inform this office that the district has adopted a rule that governs the release of the requested

information. We therefore assume that no such rule exists. Therefore, we conclude that this information is confidential in its entirety under section 261.201 of the Family Code. Accordingly, this information must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law.

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).

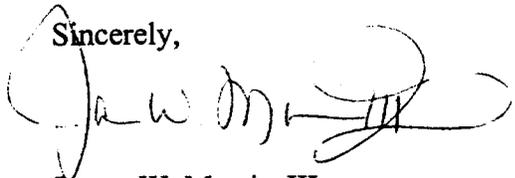
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't 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 fluid and cursive, with a large initial "J" and "M".

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

JWM/sdk

Ref: ID# 154568

Enc: Submitted documents

c: Mr. David Ferrell
6363 West Camp Wisdom, #326
Dallas, Texas 75236
(w/o enclosures)