



March 4, 2002

Mr. David A. Anderson  
General Counsel  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2002-1057

Dear Mr. Anderson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159234.

The Texas Education Agency (the "agency") received a request for an estimate or tabulation of the number of appeal hearings—whether "telephonic, in person or de novo"—held by the agency "in the past two or three years." The requestor also asked how many appeals had been made under section 7.057(a)(1) of the Education Code in the past three years. You state that you will release information responsive to the second portion of the request. As for the first portion of the request, you state that the agency is unable to closely estimate the number of de novo hearings or telephonic conferences. You argue that the request to tabulate the exact number of hearings constitutes a request to create a new document rather than merely to manipulate existing data. Consequently, you assert that the agency need not further comply with this request. We have considered your argument.

It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to create or prepare new information. *See* Attorney General Opinion JM-672 (1987), H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975). Furthermore, the Act does not require a governmental body to answer factual questions or perform legal research. *See* Open Records Decision Nos. 563 at 8 (1990), 555

at 1-2 (1990). A governmental body must only make a good faith effort to relate a request to information that it holds. *See* Open Records Decision No. 561 at 8 (1990).

The requestor in this instance is not seeking access to information that the agency maintains—i.e., the hearing records themselves. Instead the requestor asks that the agency count these records in order to produce a new document. We therefore agree that this request exceeds the scope of the Act, and you do not need to comply with it.

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "Denis C. McElroy". The signature is written in a cursive style with a large initial "D" and "M".

Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/seg

Ref: ID# 159234

c: Mr. Alan S. Jordan  
206 East 22<sup>nd</sup> Avenue  
Belton, Texas 75613