



August 26, 2002

Mr. Tom Carr
Taylor, Olson, Adkins, Sralla, Elam
6000 Western Place, Suite 200
Fort Worth, Texas 76107-4654

OR2002-4756

Dear Mr. Carr:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167591.

The Ponder Independent School District (the "district"), which you represent, received a request for documents regarding complaints filed against a specified teacher, documents related to the transfer of any student out of this teacher's class, copies of any disciplinary actions taken against the specified teacher, and copies of this teacher's performance evaluations. You state that the district does not have information responsive to the request regarding complaints, transfer of students, and disciplinary actions. We note that the Public Information Act (the "Act") does not require the district to disclose information that did not exist at the time the request was received. *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 claim that the responsive evaluations are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. We have considered the exception you claim and reviewed the submitted information.

We note at the outset that this office received a complaint from the requestor stating that the district failed to respond to her request for information. In response to our inquiry, you stated that the district did not respond to the request because it was not properly submitted to the designated officer for public information. Specifically, you state that the requestor submitted her request by facsimile to the principal of the elementary school in question. You explain that because the superintendent of schools is the officer for public information, the Act was not triggered by the request to the principal. We note that although the Act permits a request for information to be transmitted by facsimile or electronic mail, such a request must be addressed directly to the officer for public information or that individual's designee. See Gov't Code § 552.301(c). Further, section 552.201(a) of the Government Code states

that the chief administrative officer of a governmental body is the officer for public information. We find that the superintendent of schools is the chief administrative officer who serves as the officer for public information in regard to facsimile and electronic mail requests for information for the school district.¹ As the instant request was transmitted by facsimile and was not appropriately addressed to the officer for public information or his designee, we conclude that the district did not receive a written request for public information that triggered the Act. Therefore, the district need not comply with this request.

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).

¹We note that all other written requests for information may be submitted directly to each school within the school district.

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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 167591

Enc: Submitted documents

c: Ms. Christine A. Dick
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(w/o enclosures)