



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 21, 2003

Ms. Lisa B. Silvia  
Paralegal  
Fort Worth Independent School District  
100 North University Drive, Suite NW 130  
Fort Worth, Texas 76107

OR2003-3404

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 181426.

The Fort Worth Independent School District (the "District") received a media request for copies of "[a]ny and all sworn statements, transcripts of interviews, videotapes or audiotapes of interviews and depositions taken by Whitley Penn and/or their agents . . . related to the forensic audit prepared for [the District] and delivered to the board of education in January, 2003." You assert the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.135 of the Government Code. We acknowledge our receipt of comments and supporting documentation submitted by the requestor, as permitted by the Act. *See* Gov't Code § 552.304 (permitting interested third party to submit comments explaining why information should or should not be released). We have reviewed the representative sample of information you submitted and we have considered the issues raised by the District and the requestor.<sup>1</sup>

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<sup>1</sup> We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Initially, we note your contention that the requested documents are not the property of the District, but rather, that of Whitley Penn according to a contractual agreement. The Act applies only to “public information.” See Gov’t Code § 552.021. Section 552.002 of the Government Code defines public information as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002. In Open Records Decision No. 445 (1986), this office addressed whether notes and information acquired by an outside consultant in preparation of a report were “public information” for purposes of the Act. In that case, the consultant contracted with the governmental body to provide a comprehensive written report to the governmental body. *Id.* However, the contract did not provide the governmental body access to notes and information acquired by the consultant in preparation of the report. *Id.* Furthermore, the governmental body indicated that it did not possess the information and did not know the contents of the information. *Id.* This office held that the notes and information acquired by the consultant in preparation of the report were not “public information” for purposes of the Act and therefore, were not required to be disclosed. *Id.*

In this instance, the requested information consists of sworn statements obtained by Whitley Penn during the course of a forensic audit of certain construction-related transactions. Similar to the situation in Open Records Decision No. 445, you provide a copy of a contract between Whitley Penn and the District for the forensic audit services. The contractual agreement contains provisions that address the availability of information obtained as a result of the forensic audit investigation. Specifically, the contract requires Whitley Penn to produce a final report and present and explain to the District and its legal advisors any findings and conclusions. However, the contract expressly states Whitley Penn will not provide copies of audit work papers to the District or its employees or representatives. Further, the contract indicates that, in accordance with industry standards, the audit work papers are the exclusive property of Whitley Penn.

Based on our review of the submitted documents, we believe the requested information constitutes audit work papers within the exclusive possession of Whitley Penn. Accordingly, we conclude the requested information is not “public information” under the Act because the District neither possesses nor has access to the papers. *Id.*; Gov’t Code § 552.002. As this conclusion is dispositive, we need not address your other claimed exceptions.

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 Pub. 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 that reads "Christen Sorrell". The signature is written in a cursive, flowing style.

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 181426

Enc: Submitted documents

c: Ms. Jennifer Autrey  
Fort Worth Star-Telegram  
P.O. Box 1870  
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(w/o enclosures)