



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

June 2, 2003

Mr. J. Erik Nichols  
Henslee, Fowler, Hepworth & Schwartz  
3200 Southwest Freeway, Suite 2300  
Houston, Texas 77027-7528

OR2003-3699

Dear Mr. Nichols:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181999.

The Bryan Independent School District (the "district"), which you represent, received a request for "[a]ny and all school records, minutes of meetings, or tape recordings related to any and all non-extended administrators where action was taken at the February 2003 School Board meeting" as well as "copies of minutes of the Executive Session of the Bryan School Board at the February 2003 meeting."

You state that the district does not maintain information responsive to the second part of this request. It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information in existence at the time a request for information is received. *See* Gov't Code §§ 552.002, .021, .227, .351. A governmental body need not release information that did not exist when it received a request or create new information in response to a request. *See Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ *dism'd*).

As for the first portion of the request, you inform us that the district has sent the requestor a letter seeking the clarification or narrowing of this aspect of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You inform us that, as of the date you requested this ruling, the district had not received a response to its letter. Because the district is awaiting a response, its deadline for seeking a ruling from this office has been tolled. *See* Open Records Decision No. 663 (1999) (determining that during interval in which governmental body and requestor communicate in good faith to narrow or clarify request, the Act permits a tolling of deadlines imposed by section 552.301).

We note, however, that a governmental body's request for clarification or narrowing does not give that governmental body an additional ten full business days from the date the requestor responds to the clarification request. Instead, "the ten-day deadline is tolled during the process but resumes, upon receipt of the clarification or narrowing response, on the day that the clarification is received." ORD 663 at 5. Thus, the district's deadlines for requesting a ruling from this office will resume upon the district's receipt of the requestor's response.

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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 181999

Enc. Submitted documents

c: Mr. Travis B. Bryan, III  
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(w/o enclosures)