



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2003

Mr. Gustavo L. Acevedo, Jr.
Attorney at Law
814 Del Oro Lane
Pharr, Texas 78577

OR2003-5841

Dear Mr. Acevedo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186355.

The Donna Independent School District (the "district"), which you represent, received a request for "copies of all 'Indoor Air *Quality Tests and reports*' performed at Stainke Elementary School between May of 2002 and April 2003." (Emphasis in original). You claim that the requested information is excepted from disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that the information that you have submitted to us for our review is not responsive to the request for information. As noted above, the requestor seeks copies of information pertaining to indoor air quality tests performed at Stainke Elementary School *between May of 2002 and April 2003*. We note that the submitted information concerns indoor air quality tests that were performed at the school prior to May of 2002. Because the submitted information is not responsive to the request, we need not address the public availability of that information and find that the district need not release it to the requestor in response to this ruling.

However, we must next address the procedural requirements of section 552.301 of the Government Code. We note that when a governmental body receives a written request for information, it must respond to the request by either promptly making the requested information available to the requestor or by seeking an attorney general decision if it seeks to withhold the information. *See* Gov't Code §§ 552.221, .301. In order for a governmental body to withhold information, information requested under the Public Information Act (the "Act") must be encompassed by an exception to disclosure. Section 552.301 dictates the procedures that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information is encompassed by an exception to disclosure. Under section 552.301, the governmental body must submit to this office: 1) "written

comments stating the reasons why the stated exceptions apply that would allow the information to be withheld," 2) "a copy of the written request for information," 3) "a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date," and 4) "a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested." Gov't Code § 552.301(e)(1)(A), (B), (C), (D). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302.

To date, the district has not submitted the information requested of the district in this instance and, thus, has failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting this decision from us. Therefore, the requested information is presumed to be public and must be released, unless there is a compelling reason to withhold the information from the public. *See* Gov't Code § 552.302; *see also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). Although the district claims that the requested information is excepted from disclosure pursuant to sections 552.103, 552.107, and 552.111 of the Government Code, we note that these particular exceptions to disclosure are discretionary exceptions to disclosure under the Act that do not constitute compelling interests that are sufficient to overcome the presumption that the requested information is now public.¹ Accordingly, we conclude that the district may not withhold any portion of the requested information under sections 552.103, 552.107, or 552.111 of the Government Code. Consequently, the district must release the requested information to the requestor in its entirety to the extent that such information exists and is maintained by the district.

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.

¹ Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive statutory predecessor to section 552.111); *see also Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

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).

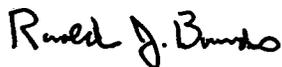
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 186355

Enc. Submitted documents

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