ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 16, 2006

Ms. Debra G. Rosenberg
Atlas & Hall, L.L.P.
P. O. Box 3725
McAllen, Texas 78502-3725

OR2006-01541

Dear Ms. Rosenberg:

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# 242471.

The McAllen Independent School District (the "district"), which you represent, received a request for 1) the tape recording or video of a specified district board meeting, 2) copies of correspondence between the district and Mutual of Omaha ("Omaha") during specified dates, and 3) copies of all open records requests received during a specified period by the district regarding employee health insurance plans. You state that the submitted information may be excepted from disclosure under section 552.101 and 552.110 of the Government Code, but take no position as to whether this information is excepted under these sections. Instead, you state that the submitted information may implicate the proprietary interests of a third party. Accordingly, you inform us that you notified the interested party, Omaha, of the request and of their right to submit arguments to this office as to why their information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). We have reviewed the submitted information.

Initially, we note that you have not submitted all of the requested information for our review. Therefore, to the extent any additional information existed on the date the district received this request, we assume it has been released. If the district has not released any such records, the district must release them to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.; *see also* Open Records Decision No. 664 (2000) (noting that if

governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

We note that an interested third party is allowed ten business days after the date of its receipt of a governmental body's notice under section 552.305(d) of the Government Code to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Omaha has not submitted comments to this office explaining why any portion of the submitted information relating to them should not be released to the requestor. Thus, we have no basis to conclude that the release of any portion of the submitted information relating to Omaha would implicate its proprietary interests. *See* Gov't Code § 552.110; Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under section 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm). Accordingly, we conclude that the district may not withhold any portion of the submitted information based on the proprietary interests of Omaha.

We note that a portion of the submitted information is subject to section 552.136 of the Government Code. Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, the district must withhold the account numbers we have marked pursuant to section 552.136. As you raise no other exceptions to disclosure, the district must release the remaining requested information.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

Candice M. De La Garza
Assistant Attorney General
Open Records Division

CMD/krl

Ref: ID# 242471

Enc. Submitted documents

c: Mr. William R. Rusteberg
1010 E. Tyler
Harlingen, Texas 78550
(w/o enclosures)