



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

December 20, 2005

Ms. Marney Collins Sims
General Counsel
Cypress-Fairbanks Independent School District
P. O. Box 692003
Houston, Texas 77269-2003

OR2005-11423

Dear Ms. Sims:

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# 242252.

The Cypress-Fairbanks Independent School District (the "district") received a request for copies of records pertaining to a named student.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.110, 552.111, 552.114, 552.117, 552.122, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that a portion of the requested information is the subject of a prior ruling of this office, issued as Open Records Letter No. 2005-10571 (2005) on November 22, 2005. *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). You have not indicated that the pertinent facts and circumstances have changed since the issuance of Open Records Letter No. 2005-10571. Consequently, we determine that the district must continue to follow our ruling in Open Records Letter No. 2005-10571 with respect to the information at issue in that ruling.

¹We note that the district sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

We next address the district's obligations under the Act for the remaining information. Pursuant to section 552.301(e), the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general 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 or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You inform us that the district received this request on November 14, 2005. On November 21, 2005, you sent a letter to the requestor seeking clarification of the request. You received the requestor's response on November 28, 2005. You have not submitted to this office written comments stating the reasons why the exceptions you have raised would allow the information to be withheld, nor have you provided a copy or representative sample of the information requested. Consequently, we find that the district failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally speaking, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Sections 552.108, 552.111, and 552.122 are discretionary exceptions to disclosure that protect the governmental body's interests and may be waived by the governmental body. *See* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Sections 552.101, 552.102, 552.110, 552.114, 552.117, and 552.137 can provide compelling reasons to withhold the information from disclosure under section 552.302. However, because you have not submitted any responsive information for our review, we have no basis for concluding that there is any compelling reason to withhold the requested information under these exceptions. We therefore conclude that the district must release the information at issue to the requestor. If you believe the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

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).

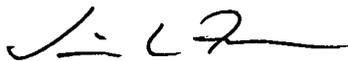
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 242252

c: Mr. Donald R. Collins
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Houston, TX 77095
(w/o enclosures)