ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 1, 2006

Ms. Angie Gonzalez-de los Rios
Public Information Officer
Donna Independent School District
116 North 10th
Donna, Texas 78537

OR2006-05762

Dear Ms. Gonzalez-de los Rios:

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# 250584.

The Donna Independent School District (the "district") received a request for all information pertaining to a specific investigation involving a named person. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[1]

Initially, we note that you have redacted information from the submitted documents that you seek to withhold. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold any information with the exception of social security numbers without seeking a ruling from this office. *See* Gov't Code §§ 552.301(a), .147 (authorizing a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act);

[1]We assume that 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 that those records contain substantially different types of information than that submitted to this office.

Open Records Decision No. 673 (2001). Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling on that information in this instance. Nevertheless, be advised that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), 552.302.

Next, we must address the district's obligations under the Act, chapter 552 of the Government Code. Section 552.301(b) of the Government Code provides that a governmental body that wishes to withhold requested information must "ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request." Gov't Code § 552.301(b). Pursuant to section 552.301(e), the governmental body must, within fifteen business days of receiving the request, 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 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. Gov't Code § 552.301(e)(1)(A)-(D). You state that the district received this request on March 2, 2006. However, you did not request a ruling from our office until March 24, 2006, or submit all of the necessary information for our review until May 17, 2006. Thus, the district has 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 information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See 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). 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). Although you raise section 552.108 of the Government Code, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived. Thus, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive predecessor to section 552.108), 522 at 4 (1989) (discretionary exceptions in general). *But see* Open Records Decision Nos. 630 at 3 (1994), 586 at 3 (1991) (need of another governmental body to withhold information under predecessor to section 552.108 can provide compelling reason under section 552.302).

Therefore, the district may not withhold the submitted information pursuant to section 552.108. As you raise no further exceptions to disclosure, the submitted information must be released to the requestor.[2]

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.

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[2]This information may be confidential with respect to the general public. If the district receives another request for this information from an individual other than this requestor or his authorized representative, the district should seek another decision from this office.

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,

Anne Prentice
Assistant Attorney General
Open Records Division

AP/sdk

Ref: ID# 250584

Enc. Submitted documents

c: Ms. Maria M. Castillo
c/o Angie Gonzalez-de los Rios
Donna Independent School District
116 North 10th
Donna, Texas 78537
(w/o enclosures)