



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2006

Ms. Ann Manning
The Underwood Law Firm
Attorney for Slaton Independent School District
1111 West Loop 289
Lubbock, Texas 79416

OR2006-11676

Dear Ms. Manning:

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# 261367.

The Slaton Independent School District (the "district"), which you represent, received a request for a copy of all legal fees with dates that have been paid in the last two years.¹ You claim that the requested information is excepted from disclosure based on section 552.107 of the Government Code and Texas Rule of Evidence 503.² We have considered your arguments and reviewed the submitted information.

Initially, we must address the district's procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body seeking to withhold requested information must submit to this office a copy of the written request for information within fifteen business days of its receipt. Gov't Code § 552.301(e)(1)(B). Although your brief to this office indicates that a copy of the request was attached as "Exhibit 1," we note that no such exhibit was included with your correspondence. As of the date of this ruling,

¹Because a copy of the written request for information was not submitted to our office, we take our description from your brief.

²You also raise section 552.101 of the Government Code in conjunction with section 552.107 on the basis of the attorney-client privilege. However, section 552.101 does not encompass the attorney-client privilege or other exceptions found in the Act. See Open Records Decision No. 676 at 1-3 (2002).

the district has not submitted a copy of the written request for information. We therefore find that the district has failed to comply with the procedural requirements of section 552.301(e). *See id.*

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 the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 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). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

Section 552.107 of the Government Code and Texas Rule of Evidence 503 are discretionary bases for withholding information, each of which protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, your claims under section 552.107 and rule 503 do not provide compelling reasons to withhold information for purposes of section 552.302. The district may therefore not withhold any of the requested information on these bases.

We note, however, that the submitted documents include an e-mail address that is subject to section 552.137 of the Government Code. This section is a mandatory exception to disclosure that may not be waived by a governmental body and therefore provides a compelling reason to withhold information for purposes of section 552.302.³ Section 552.137 excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail address that we have marked does not appear to be of a type specifically excluded by section 552.137(c). As such, this e-mail address must be withheld under section 552.137 unless its owner has affirmatively consented to its release. *See id.* § 552.137(b).

We also note that some of the submitted information bears notices of copyright protection. A custodian of public records must comply with copyright law and is not required to furnish

³The Office of the Attorney General will raise a mandatory exception like section 552.137 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

copies of records that are protected by copyright. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright law unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of materials that are protected by copyright law, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the district must withhold the e-mail address that we have marked under section 552.137 of the Government Code unless its owner has consented to its release. The remaining submitted information must be released to the requestor. However, in releasing information that is protected by copyright, the district must comply with copyright law.

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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/eb

Ref: ID# 261367

Enc. Submitted documents

c: Mr. Johnny Taylor
c/o Ms. Ann Manning
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(w/o enclosures)