



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2006

Mr. Ray Rushing
General Counsel
Texas State Technical College System
3801 Campus Drive
Waco, Texas 76705

OR2006-13237

Dear Mr. Rushing:

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# 264600.

Texas State Technical College (the "college") received a request for information pertaining to (1) a named individual's personnel records; (2) all records mentioning a named individual; (3) all e-mails created since January 1, 2005 that mention a named individual; (4) all student end of course surveys for each instructor in a particular department since December 1, 2004 with student-identifying information redacted; (5) all policies concerning management retaliation; (6) all records mentioning a named individual created since January 1, 2005; (7) all records mentioning the former director of continuing education, created since January 1, 2004; (8) all records mentioning a named individual, created since January 1, 2004; (9) all records discussing the reimbursement of funds and fraudulent classes conducted by two named individuals; and (10) all records originating from any member of a named individual's supervisory chain that discuss work hours. You claim that the information responsive to the sixth part of the request is excepted from disclosure under section 552.116 of the Government Code. You claim that the information responsive to the seventh, eighth, and ninth parts of the request are excepted from disclosure under

section 552.108 of the Government Code. To the extent the college maintained information responsive to the first, second, third, fourth, fifth, and tenth parts of the request on the date the request was received, we assume such information has been released. If not, any such information must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). We have considered the exceptions you claim. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

We must address the college's procedural obligations under the Act. Pursuant to section 552.301(e), a governmental body seeking to withhold information from public disclosure is required to submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(D). As of the date of this ruling, you have not submitted to this office copies or representative samples of any of the requested information for which the college claims exception from disclosure. Consequently, the college has failed to comply with 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. 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 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 reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

You assert that the requested information is excepted from disclosure under sections 552.108 and 552.116 of the Government Code. Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Furthermore, in this instance, you have not provided a compelling reason under section 552.108 to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108). Therefore, you may not withhold the requested information under section 552.108 of the Government Code. Section 552.116 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may

be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 at 2 (1987) (discretionary exceptions under the Act can be waived). Thus, the college's claim under section 552.116 is not a compelling reason for non-disclosure under section 552.302, and none of the requested information may therefore be withheld on that basis. Consequently, the college must release the requested information to the requestor.

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).

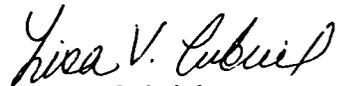
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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


Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 264600

c: Mr. George W. Reamy
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