



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 5, 2007

Mr. R. R. Escamilla  
Human Resources Administrator  
Weslaco Independent School District  
P.O. Box 266  
Weslaco, Texas 78599-0266

OR2007-01434

Dear Mr. Escamilla:

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# 270686.

The Weslaco Independent School District (the "district") received a request to inspect complaints and grievances against a former employee. You claim that the requested information is excepted from disclosure under sections 552.102 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Section 552.301(b) requires that a governmental body inform this office which exceptions apply to a request for information within ten business days of receiving the request. *See Gov't Code § 552.301(b)*. Furthermore, section 552.301(e) requires that a governmental body must submit to this office written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld within fifteen business days of receiving the request. *See Gov't Code § 552.301(e)*. The district failed to raise sections 552.102 and 552.108 within the ten business day period. The district also failed to provide any arguments explaining the reasons why the claimed exceptions would apply to allow any portion of the submitted information to be withheld. Accordingly, we conclude that the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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* 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). 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). Although you raise section 552.108 of the Government Code, this section is a discretionary exception that protect a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); 665 at 2 n.5 (2000) (discretionary exceptions in general). *But 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 submitted information under section 552.108 of the Government Code. However, section 552.102 of the Government Code does provide a compelling reason to withhold information.

Next, section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Fam. Code § 261.201(a). Because the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). You have not indicated that the district’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. As our ruling is dispositive, we do not address your claim under section 552.102.

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).

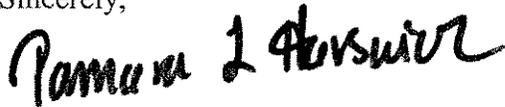
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive, slightly slanted style.

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/jww

Ref: ID# 270686

Enc. Submitted documents

c: Mr. David Robledo  
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(w/o enclosures)