



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2009

Ms. Debra G. Rosenberg
Atlas & Hall, L.L.P.
P.O. Box 3725
McAllen, Texas 78502-3725

OR2009-05730

Dear Ms. Rosenberg:

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# 342557.

The McAllen Independent School District (the "district"), which you represent, received a request for information. 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.

Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) provides that the governmental body must ask this office for a decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) provides that the governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

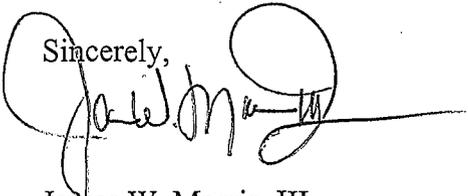
You have not informed us of the date of the district's receipt of the instant request for information. Therefore, we are unable to conclude that the district complied with

section 552.301(b) in requesting this decision. Moreover, as of the date of this decision, you have not submitted to this office any arguments in support of the exception the district claims, a copy of the request for information, or any information the district seeks to withhold. Thus, the district has not complied with section 552.301, and the requested information is therefore presumed to be public under section 552.302. This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). The district claims an exception to disclosure under section 552.108 of the Government Code, which is a discretionary exception 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The district's claim under section 552.108 is not a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 (1991). In failing to comply with section 552.301, the district has waived 552.108. Therefore, the requested information may not be withheld under section 552.108 of the Government Code and must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/eb

Ref: ID# 342557

c: Requestor