



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 28, 2009

Mr. Humberto Aguilera
Escamilla & Poneck, Inc.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2009-07268

Dear Mr. Aguilera:

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# 346381.

The San Antonio Independent School District (the "district"), which you represent, received a request for information related to the district's denial of the requestor's request for "visitor/mentor approval" to be on two district campuses. You state that the district has released most of the responsive information. You claim that portions of the submitted information are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. You inform us that the district received the request for information on March 26, 2009; however, you did not request a ruling from this office until April 14, 2009. Consequently, we find you have failed to comply with the requirements of section 552.301.

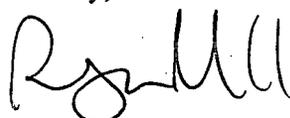
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released; the governmental body can

overcome this presumption only by demonstrating a compelling reason to withhold the information. 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); 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 552.103 of the Government Code, that section is a discretionary exception that protects a governmental body's interests and which may be waived. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, section 552.103 does not provide a compelling reason for non-disclosure, and the district may not withhold the submitted information under that exception. As you raise no further exceptions against disclosure, the district must release the submitted information.

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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/cc

Ref: ID# 346381

Enc. Submitted documents

cc: Requestor
(w/o enclosures)