



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 13, 2009

Ms. Karla Schultz
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2009-11340

Dear Ms. Schultz:

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# 352133.

The Georgetown Independent School District (the "district"), which you represent, received a request for forty-nine categories of information concerning policies, procedures, and documents regarding certain types of incidents as well as documents related to specified parts of the Education Code. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim.

We must address the district's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code §§ 552.301(e)(1)(B), (D). As of the date of this letter, you have not submitted to this office a copy or representative sample of the information at issue. Consequently, we find the district 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 submit to this office the information required in section 552.301(e) results in the legal presumption 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 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 of the Government Code); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Because the district has failed to comply with the requirements of the Act, the district has waived its claim under section 552.103, which is a discretionary exception to disclosure. *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); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). We, therefore, conclude the district must release the requested information to the requestor pursuant to section 552.302.¹

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

¹We note that, based on certain categories of the information requested, portions of the responsive information may be subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a). Because our office is prohibited from reviewing education records to determine whether appropriate redactions were made under FERPA, we do not address the applicability of FERPA to any responsive documents. We do note, however, that if any of the responsive documents contain information subject to FERPA, then FERPA controls to the extent the requirements of FERPA conflict with state law, including the Public Information Act. *See* Open Records Decision No. 431 (1985) (FERPA prevails if in conflict with state law); *see also* Equal Employment Opportunity Comm'n v. City of Orange, Texas, 905 F. Supp 381, 382 (E.D. Tex. 1995).

Ref: ID# 352133

Enc. Submitted documents

c: Requestor
(w/o enclosures)