



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 18, 2009

Mrs. Dahlia Anzaldua Torres  
Public Information & College Marketing  
Austin Community College  
Highland Business Center  
5930 Middle Fiskville Road  
Austin, Texas 78752-4390

OR2009-17945

Dear Mrs. Torres:

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# 364812.

Austin Community College (the "college") received a request for records pertaining to the requestor. You state that you have redacted student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the requested information.<sup>2</sup>

Initially, we note a portion of the requested information was the subject of a previous ruling issued by this office. In Open Records Letter No. 2009-11465 (2009), this office concluded the college (1) must withhold the information we marked under section 552.101 in

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

conjunction with common-law privacy, (2) withhold the information we marked under section 552.117 to the extent that the employee to whom the information at issue pertains timely elected confidentiality for his information under section 552.024, and (3) withhold the e-mail addresses we marked under section 552.137 unless the college receives consent to release the e-mail addresses at issue. As we have no indication that the law, facts, and circumstances on which this prior ruling was based have changed, you may continue to rely on this prior ruling as a previous determination and withhold or release the information requested in this instance that was previously ruled upon in that decision. *See* Open Records Decision No. 673 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). With respect to the information that was not previously ruled upon in Open Records Letter No. 2009-11465, we will address your remaining arguments against disclosure of this information.

Next, we must address the college's obligations under the Act. Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). On October 8, 2009, you submitted an e-mail from the requestor dated September 3, 2009, requesting all documents pertaining to herself, including documents from several named individuals. However, that request is not at issue in the current ruling. The current request asks for all information from September 25, 2004, until September 25, 2009. Although a portion of the September 25, 2009, request is covered, in part, by Open Records Letter No. 2009-11465, there are additional documents not previously ruled on that were requested. Accordingly, you should have submitted the September 25, 2009, request with your request for a ruling. You did not submit the September 25, 2009, request until December 2, 2009. Accordingly, we find that the college failed to comply with the requirements of section 552.301.

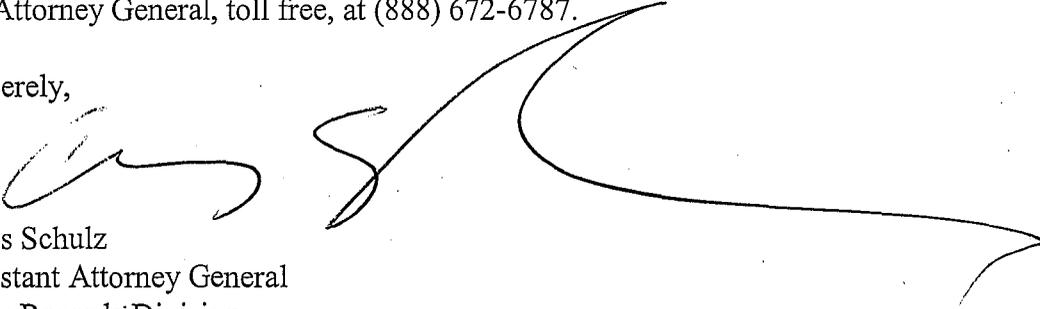
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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 by law. Open Records Decision No. 150 (1977). By failing to comply with the procedural requirements of the Act, the college waived its claim under section 552.107 of the Government Code, which is a discretionary exception to disclosure. See Open Records Decision Nos. 676 at 11-12 (2002) (attorney-client privilege under section 552.107 and Texas Rule of Evidence 503 subject to waiver), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions), 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107). Accordingly, the college may not withhold the remaining information under section 552.107. The remaining information must be released, as you raise no further exceptions against disclosure.<sup>3</sup>

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](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, toll free, at (888) 672-6787.

Sincerely,



Chris Schulz  
Assistant Attorney General  
Open Records Division

CS/cc

Ref: ID# 364812

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)

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<sup>3</sup> We note that the information being released contains the requestor's e-mail address to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Therefore, if the college receives another request for this same information from a different requestor, then the college should again seek a decision from this office.