



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 19, 2010

Mr. John J. Janssen
Staff Attorney
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2010-03923

Dear Mr. Janssen:

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# 373346.

The Corpus Christi Independent School District (the "district") received a request for eight categories of information pertaining to the district's policy toward prayer or religious expression at school. You claim that the requested information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.114 of the Government Code.¹ We have considered the exceptions you claim.

We must address the district's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the state exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed

¹ Although you also raise section 552.026 of the Government Code as an exception to disclosure, section 552.026 is not an exception to disclosure. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. Gov't Code § 552.026.

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)(1)(A)-(D). As of this date, you have not submitted to this office a copy or representative sample of the information requested. Accordingly, we conclude the district failed to comply with the procedural 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 the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you raise sections 552.107 and 552.111 of the Government Code as exceptions to disclosure of the information at issue, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See* Open Records Decisions Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 630 at 4 (1994) (governmental body may waive attorney-client privilege under section 552.107(1)), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Accordingly, the district may not withhold any of the requested information pursuant to section 552.107 or section 552.111 of the Government Code. Sections 552.101 and 552.114 of the Government Code can provide compelling reasons to overcome the presumption of openness; however, because you have not submitted any of the requested information for our review, we have no basis to find that sections 552.101 and 552.114 are applicable to the requested information. We therefore conclude the district must release the requested information to the requestor pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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

Sincerely,



James McGuire
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 373346

c: Requestor
(w/o enclosures)