



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2011

Ms. Debbie S. Rodriguez
Assistant Superintendent for Human Resources
Donna Independent School District
116 North 10th Street
Donna, Texas 78537

OR2011-04542

Dear Ms. Rodriguez:

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# 414330.

The Donna Independent School District (the "district") received a request for information relating to the arrest of the requestor. You claim the requested information is 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 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(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). 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 (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. *See id.* § 552.301(e). In this instance, you state the district received the request for information on September 4, 2010. We note September 4, 2010 was a Saturday and September 6, 2010 was a holiday. We note this office does not count holidays for the purpose of calculating a governmental body's deadlines under the Act. However, you did not request a ruling from this office or submit the information at issue until February 1, 2011. Thus, 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 comply with the requirements of section 552.301 results in the legal presumption the 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 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. *See* Open Records Decision No. 150 at 2 (1977). You raise section 552.103 of the Government Code, which is discretionary in nature. Section 552.103 serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *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); Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Because section 552.103 is a discretionary exception, the district waived any assertions under this section by its failure to comply with section 552.301. Further, you have not provided us with any other source of law or asserted third party interests may be at stake. Consequently, we find the district failed to establish a compelling reason exists to withhold the submitted information. Thus, the district may not withhold the submitted information pursuant to section 552.103. As you raise no further exceptions to disclosure of the submitted information, the district must release it 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, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tamara Wilcox', written in a cursive style.

Tamara Wilcox
Assistant Attorney General
Open Records Division

TW/tf

Ref: ID# 414330

Enc. Submitted documents

c: Requestor
(w/o enclosures)