



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 16, 2011

Mr. Robert A. Schulman
For Harmony Public Schools
Schulman, Lopez & Hoffer, L.L.P.
517 Soledad Street
San Antonio, Texas 78205

OR2011-18518

Dear Mr. Schulman:

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# 439482.

The Cosmos Foundation, Inc. d/b/a Harmony Public Schools (the "foundation"), which you represent, received a request for a list all employees who work more than 30 hours per week, including names, worksites, e-mail addresses, and home addresses. You claim the requested information is excepted from disclosure pursuant to sections 552.101 through 552.105, 552.107 through 552.111, 552.113 through 552.1175, 552.119, 552.122, 552.124, 552.126 through 552.1325, 552.135 through 552.137, 552.139, 552.140, 552.142, 552.143, and 552.147 of the Government Code, and privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5.¹ We have considered your arguments.

We must address the foundation'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

¹Although you raise sections 552.001, 552.022, 552.024, 552.026, 552.027, and 552.305 of the Government Code, we note these sections are not exceptions to public disclosure under the Act.

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* Gov't Code § 552.301(e). As of the date of this letter, the foundation has not submitted to this office comments explaining why the stated exceptions apply, nor has the foundation submitted a copy or representative sample of the information requested. Consequently, we find the foundation 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 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 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* ORD 630. Because the foundation has failed to comply with the requirements of the Act, the foundation has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the foundation also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. We, therefore, conclude the foundation must release the requested information to the requestor pursuant to section 552.302. 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,

A handwritten signature in black ink, appearing to read "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett
Assistant Attorney General
Open Records Division

JB/dls

Ref: ID# 439482

No enclosures

c: Requestor