



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 15, 2012

Ms. Hilary Haglund Walker
Haglund Law Firm, P.C.
P.O. Box 713
Lufkin, Texas 75902-0713

OR2012-02364

Dear Ms. Walker:

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# 446335.

The Livingston Independent School District (the "district"), which you represent, received a request for six categories of information pertaining to a named individual's employment with the district. You state you have provided some of the responsive information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, and 552.111 of the Government Code. We have considered the exceptions you claim.

We note the district did not comply with section 552.301 of the Government Code in requesting this decision. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions 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, a 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). You indicate that the district received the request on November 1, 2011.

Thus, the district was required to request a decision from this office by November 15, 2011. The district's request for a decision was postmarked on December 16, 2011. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Further, as of the date of this letter, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we find that 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). You assert that the requested information is confidential under sections 552.101, 552.102, and 552.111 of the Government Code. In failing to comply with section 552.301, the district has waived section 552.111, which is a discretionary exception to disclosure. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111). Although sections 552.101 and 552.102 of the Government Code can provide compelling reasons to withhold information, because the district has not submitted any information for our review, we have no basis to conclude the information is confidential under either of these exceptions. Thus, we have no choice but to order the requested information released 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 'Sarah Casterline', with a large, stylized flourish extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/ag

Ref: ID# 446335

Enc. Submitted documents

c: Requestor
(w/o enclosures)