



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2012

Mr. Christopher B. Gilbert
For Humble Independent School District
Thompson & Horton, L.L.P.
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027

OR2012-11116

Dear Mr. Gilbert:

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# 459334.

The Humble Independent School District (the "district"), which you represent, received a request for any e-mails and text messages sent to or from ten named individuals.¹ You indicate the district will release some of the requested information to the requestor upon his response to a cost estimate letter. You claim the requested information is excepted from disclosure under sections 552.101 through 552.151 of the Government Code. We have considered the exceptions you claim.

Initially, we note some of the requested information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2012-03911 (2012). In that decision, we ruled the district may withhold the information at issue under section 552.107(1) of the Government Code. Accordingly, as we are unaware of any change in the relevant law, facts, and circumstances on which the previous ruling was

¹You inform us the district asked for and received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

based, then to the extent the requested information is identical to the information at issue in that ruling, we conclude the district may rely on Open Records Letter No. 2012-03911 as a previous determination and withhold such information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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). To the extent the requested information is not encompassed by the prior ruling, we will consider the exceptions you claim.

We next must address the district's procedural obligations under the Act for the requested information. 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 that receives a request for information it wishes to withhold 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). You state the district received the requestor's clarification of his request on April 26, 2012. Thus, the requestor's fifteen-business-day deadline was May 17, 2012. *See id.* § 552.222(b); *see also City of Dallas*, 304 S.W.3d at 387. However, as of the date of this letter, the district has not submitted to this office general written comments stating the reasons why the claimed exceptions apply to the remaining requested information or a copy of the specific information requested or a representative sample. Accordingly, we find the district has failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue 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* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *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) (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). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Because the district has failed to comply with

the requirements of the Act, it has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Furthermore, because the district has not submitted the requested information to this office for our review, we have no basis for finding it confidential under the claimed mandatory exceptions. Thus, we have no choice but to order the district to release this information in accordance with section 552.302 of the Government Code.

In summary, to the extent the requested information is identical to the information at issue in Open Records Letter No. 2012-03911, the district may rely on that ruling as a previous determination and withhold such information in accordance with that ruling. Otherwise, the district must release the requested information. If you believe this 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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/dls

Ref: ID# 459334

No enclosures

c: Requestor