



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 14, 2013

Ms. Ellen H. Spalding  
Counsel for the Eanes Independent School District  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2013-19813

Dear Ms. Spalding:

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# 505583 (Eanes ORR# 4319).

The Eanes Independent School District (the "district"), which you represent, received a request for plans of the structures built at the River Hills Sport Complex before December 2012. You claim the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim.

Section 552.301 of the Government Code prescribes the procedures 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 an exception to disclosure is required to submit to this office within fifteen business days of receiving the request (1) 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). As of the date of this letter, you have not submitted written comments stating the reason why the claimed exceptions apply or a copy or representative sample of the specific information requested. Consequently, we find the district failed to comply with the requirements of section 552.301(e) of the Government Code in asking this office for a ruling.

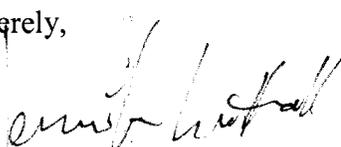
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption

that the information is public and 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; *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); Open Records Decision No. 630 (1994). Normally, 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). Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475–76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, it does not make information confidential. Accordingly, the district may not withhold any of the requested information under section 552.103 of the Government Code. The district also raises section 552.101 of the Government Code, which is a mandatory exception to disclosure. However, because you have not submitted a copy or representative sample of the information at issue for our review, we have no basis for finding any of the requested information confidential by law. Therefore, we must order the district to release the information at issue pursuant to section 552.302. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 505583

c: Requestor  
(w/o enclosures)