



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 14, 2014

Ms. Sandra Garcia
Assistant General Counsel
Office of the General Counsel
Houston Community College
3100 Main Street
Houston, Texas 77002

OR2014-00789

Dear Ms. Garcia:

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# 510976.

Houston Community College (the "college") received a request for reports, investigations, or memoranda in response to a specified complaint, including any administrative response and any response from a named individual.¹ You claim the submitted information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the college'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 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,

¹As you have not submitted a copy of the written request for information, we take our description from your brief.

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 state the college received the request for information on October 14, 2013. However, as of the date of this letter, the college has not submitted a copy of the written request for information. Consequently, we find the college 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. Although you raise sections 552.107 and 552.111 of the Government Code, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under section 552.111 is not compelling reason to withhold information under section 552.302), 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (governmental body may waive sections 552.107 and 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301, the college has waived its claims under sections 552.107 and 552.111 of the Government Code. Accordingly, the college may not withhold the submitted information on those bases. As you claim no other exceptions to disclosure, the college must release the submitted information.

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, 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,

A handwritten signature in cursive script, appearing to read "Kristi L. Wilkins".

Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/som

Ref: ID# 510976

Enc. Submitted documents

c: Requestor
(w/o enclosures)