



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 23, 2014

Ms. Lynda Radford
Paralegal for Susan G. Morrison
The Fowler Law Firm, P.C.
919 Congress Avenue, Suite 900
Austin, Texas 78701

OR2014-10699

Dear Ms. Radford:

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# 532914.

The Doss Consolidated Common School District (the "district"), which you represent, received a request for specified invoices for attorney fees. You state most of the responsive information has been provided to the requestor. You claim some of the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code and privileged under Texas Rule of Evidence 503.¹ As you also assert the attorney work product privilege, we understand you to raise section 552.111 of the Government Code. We have considered your claims and reviewed the submitted information.

We must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b).

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

In this instance, you state the district received the request for information on March 27, 2014. Accordingly, the district's ten-business-day deadline was April 10, 2014. You attempted to submit the request for a ruling electronically on April 10, 2014. However, your electronic submission did not meet the requirement of section 552.309 of the Government Code for requests for rulings by electronic submission. *See id.* § 552.309(a) (requirement to submit information within specified period under the Act is met in timely fashion if it is submitted through attorney general's designated electronic filing system within that period). You subsequently submitted the district's request for a ruling to this office by hand delivery on April 11, 2014. Therefore, we determine the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

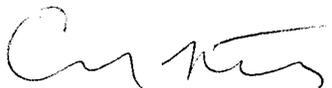
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, 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. *See* Open Records Decision No. 150 at 2 (1977).

You assert the information you have marked is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code and privileged under Texas Rule of Evidence 503. However, these exceptions and this rule are discretionary in nature and may be waived, and, thus, do not provide compelling reasons to withhold information under section 552.302. *See 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 Gov't Code § 552.103); *see also* Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under section 552.111 or Texas Rule of Civil Procedure 192.5 is not compelling reason to withhold information under section 552.302), 676 at 11-12 (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, the district may not withhold any of the information at issue under section 552.103, section 552.107, or section 552.111 of the Government Code or Texas Rule of Evidence 503. Accordingly, the district must release the submitted information to the requestor.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 532914

Enc. Submitted documents

c: Requestor
(w/o enclosures)