



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 23, 2014

Mr. Tony Resendez
Counsel for the Southside Independent School District
Walsh, Anderson, Gallegos, Green and Trevino, P.C.
100 Northeast Loop 410, #900
San Antonio, Texas 78216

OR2014-19132

Dear Mr. Resendez:

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# 541553.

The Southside Independent School District (the "district"), which you represent, received a request for information pertaining to all district employees hired during a specified time period and names of other applicants who were not hired during the same time period. You claim the requested information is excepted from disclosure under sections 552.101 through 552.154 of the Government Code. We have considered the exceptions you claim.

Initially, 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). Further, pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records 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. *See id.* § 552.301(e). The district received the request for information on August 11, 2014. On August 15, 2014, the district provided the requestor with a cost estimate for providing requested records in compliance with section 552.2615 of the Government Code. *See id.* § 552.2615 (providing governmental body shall provide requestor

with estimate of charges if charges exceed \$40). You inform us on August 21, 2014, in response to the cost estimate, the requestor informed the district he would send to the Office of the Attorney General a complaint alleging he was being overcharged for copies of public information. *See id.* § 552.2615(b)(3). On August 25, 2014, the district requested a decision from this office pursuant to section 552.301(b) of the Government Code. *See id.* § 552.301(b).

On September 4, 2014, the district sent correspondence to this office in which the district seeks to withdraw its request for a ruling, and states the district will continue processing the request for information when this office has made its determination regarding the requestor's complaint of overcharging. Section 552.2615(b) states if the requestor does not respond in writing to the itemized statement within 10 business days after the date the statement is sent to the requestor, the request is considered to have been withdrawn. *See id.* § 552.2615(b). You do not assert the requestor failed to respond in writing to the itemized cost estimate as required by section 552.2615(b). Section 552.263(e) provides when a governmental body requires a deposit or bond for anticipated costs, the request for information is considered received on the date the governmental body receives the deposit or bond. *See id.* § 552.263(e). Here, the district sent an estimate pursuant to section 552.2615, and did not require a deposit or bond from the requestor pursuant to section 552.263. Thus, upon review, we find the requestor has not withdrawn his request for information. *See id.* §§ 552.2615(b), .263(e). We note section 552.2615 provides the submission of an estimate of charges to the requestor does not toll the governmental body's deadlines to ask for an attorney general decision under section 552.301. *See id.* §§ 552.2615(g) (providing "[t]he time deadlines imposed by this section do not affect the application of a time deadline imposed on a governmental body under Subchapter G"). Accordingly, we find the district's deadlines under section 552.301 were not tolled. Thus, we find the district has asserted no valid basis for withdrawing its request for a ruling. Therefore, this office must issue a written opinion of its determination whether the requested information is excepted from disclosure. *See id.* § 552.306(a) (requiring attorney general to "promptly render a decision requested under [the Act], consistent with the standards of due process, determining whether the requested information is within one of the exceptions of [the Act]").

As noted above, the district received the request for ruling on August 11, 2014. We understand the district was closed on September 1, 2014. You do not inform us the district was closed for any additional business days between August 11, 2014, and September 2, 2014. Therefore, the district's ten- and fifteen-business-day deadlines were August 25, 2014, and September 2, 2014, respectively. In this instance, as noted above, the district requested an opinion from this office on August 25, 2014. However, as of the date of this letter, you have not submitted to this office written comments stating the reasons why your claimed exceptions apply, or a copy or representative sample of the information requested. Consequently, we find the district failed to comply with the requirements of 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 procedural requirements of section 552.301 results in the legal presumption

that 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 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* Open Records Decision No. 630 (1994). Because the district failed to comply with the procedural requirements of the Act, the district has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the district also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. 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.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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 541553

c: Requestor