



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 7, 2015

Mr. Benjamin Castillo  
Counsel for the Pharr San Juan Alamo Independent School District  
O'Hanlon, Rodriguez Betancourt & Demerath  
220 South Jackson Road  
Edinburg, Texas 78539

OR2015-16305

Dear Mr. Castillo:

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# 575189.

The Pharr San Juan Alamo Independent School District (the "district"), which you represent, received a request for all information relating to Texas Descon, LP ("Descon") construction projects at the district during a specified period of time, including e-mails involving Descon that mention specified key words, and the meeting minutes and audio/video recording of a specified school board meeting.<sup>1</sup> The district states it has released some of the requested information. The district claims the submitted information is excepted from disclosure under section 552.107 of the Government Code.<sup>2</sup> We have considered the exception the district claims and reviewed the submitted information.

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<sup>1</sup>We note the district received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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 a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>Although the district claims Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107 of the Government Code. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

Initially, we must address the district's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 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. *Id.* § 552.301(e). The district states it received the request for information on May 5, 2015 and the requestor clarified the request on May 6, 2015. *See id.* § 552.222 (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 a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). The district does not inform us it was closed for business on any of the days at issue. However, we note May 25, 2015, was Memorial Day. This office does not count the date the request was received or holidays for the purposes of calculating a governmental body's deadlines under the Act. Accordingly, the ten-business-day deadline was May 20, 2015, and the fifteen-business-day deadline was May 28, 2015. However, the district submitted the information required under subsections 552.301(b) and (e) in an envelope bearing a post-office cancellation mark of June 3, 2015. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find the district failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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 compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). The district claims section 552.107 of the Government Code for the submitted information. However, this exception is discretionary in nature. It serves to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary

exceptions). Accordingly, the district may not withhold any portion of the submitted information under section 552.107 of the Government Code. As no other exceptions to disclosure are raised for the submitted information, the district must release it.

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,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/bhf

Ref: ID# 575189

Enc. Submitted documents

c: Requestor  
(w/o enclosures)