



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 16, 2004

Ms. Eronda N. Johnson
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR2004-7910

Dear Ms. Johnson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 209076.

The Mansfield Independent School District (the "district"), which you represent, received a request from the State Board for Educator Certification ("SBEC") for specified categories of employment information concerning a named former district employee, including (1) reports, notes, statements, or memoranda that reflect a chronology of the conduct reported or the district's investigation of the incident; (2) the employee's application for employment and any documents submitted in support of the application; (3) any information that evidences administrative reprimands or other disciplinary measures; (4) any documentation relating to the employee's employment; (5) the employee's teacher service record; and (6) any other document that may be relevant to SBEC's investigation of the employee. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, 552.103, 552.114, and 552.135 of the Government Code. We have considered the exceptions you claim.

Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the

documents. You failed to request a decision from this office within ten business days of receiving the request for information. Additionally, you have not submitted to this office copies or representative samples of the specific information that was requested nor have you submitted written comments stating the reasons why each exception that you raised would allow the information to be withheld. Consequently, you have failed to comply with section 552.301.

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. 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* Gov't Code § 552.302; *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); Open Records Decision No. 319 (1982). 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). Section 552.103 of the Government Code is a discretionary exception that protects a governmental body's interests and may be waived. As such, it does not constitute a compelling reason to withhold information. *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 section 552.103); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, none of the requested information may be withheld on this basis. On the other hand, sections 552.026, 552.101, 552.114, and 552.135 of the Government Code are designed to protect information that is confidential by law or involves individuals' privacy interests and can provide compelling reasons for withholding information. However, as you have not submitted any of the requested information, or a representative sample, for our review, we have no basis for finding it confidential. Thus, we have no choice but to order you to release the requested information in accordance with section 552.302.¹ If you believe such information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

¹ *But see* Open Records Decision No. 634 (1995) (educational agency or institution may withhold from public disclosure information protected by Family Educational Rights and Privacy Act and therefore excepted by sections 552.026 and 552.101 without requesting attorney general decision as to that exception).

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine
Assistant Attorney General
Open Records Division

LEK/jev

Ref: ID# 209076

c: Mr. Michael Garcia
State Board for Educator Certification
1701 North Congress Avenue, 5th Floor
Austin, Texas 78701
(w/o enclosures)