



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 7, 2004

Mr. Mario L. Vasquez  
Assistant General Counsel  
Houston Independent School District  
3830 Richmond Avenue  
Houston, Texas 77027

OR2004-8529

Dear Mr. Vasquez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210796.

The Houston Independent School District (the "district") received a request to inspect the following six categories of information:

1. Resume of [a named individual].
2. E-mails sent or received by [a named individual] since May 1, 2004.
3. Copies of all photos of all Deputy or Assistant Superintendents used for their employee I.D.s.
4. Payments to [a named individual] or his consulting company since January, 1, 2003.
5. Copy of the current contract between [the district] and [a named individual].
6. Documents detailing the current contract between [the district] and a [named company].

The district states it will make the information responsive to categories one and three through six available to the requestor for inspection. The district claims that some of the information in category two is excepted from disclosure under sections 552.103, 552.104, 552.105, 552.107, 552.108, and 552.114 of the Government Code, as well as the Family Educational

Rights and Privacy Act of 1974 ("FERPA"). We have considered the exceptions you claim.

Initially, we address the district's obligations under section 552.301 of the Government Code. 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 have not provided this office with copies of the specific information requested or general written comments as to why the stated exceptions apply. 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 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 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

Sections 552.103, 552.104, 552.105, 552.107, and 552.108 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived by the governmental body. *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* Open Records Decision Nos. 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107), 592 at 8 (1991) (addressing statutory predecessor to section 552.104), 564 at 2 (1990) (governmental body may waive statutory predecessor to section 552.105); and 177 at 3 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 (2000) (discussing discretionary exceptions generally). As such, these exceptions do not constitute compelling reasons to withhold information. Therefore, none of the information at issue may be withheld based on these exceptions.

We note that Open Records Decision No. 634 permits an educational agency or institution to withhold information protected by FERPA and excepted from disclosure under section 552.114 without the necessity of requesting an attorney general decision. *See* Open Records Decision No. 634 (1995). Therefore, this prior decision authorizes the district to

withhold the information at issue to the extent it is confidential under FERPA and section 552.114. The remaining information must be released.

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 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).

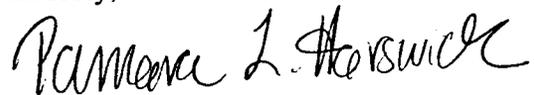
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink that reads "Tamara L. Harswick". The signature is written in a cursive style with a large initial "T" and a stylized "H".

Tamara L. Harswick  
Assistant Attorney General  
Open Records Division

TLH/krl

Ref: ID# 210796

c: Mr. Wayne Dolcefino  
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