



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 15, 2005

Ms. Jo Ann Collier  
Feldman & Rogers, LLP  
517 Soledad Street  
San Antonio, TX 78205

OR2005-01378

Dear Ms. Collier:

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# 218903.

The North East Independent School District (the "district"), which you represent, received a request for a named teacher's employment application and other employment related documents. You state that you have released some of the requested information, but you claim that the remaining information is excepted from disclosure under sections 552.101 and section 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first note that you submitted a portion of the responsive information to our office after the 15-day deadline, and thus, have not complied with the procedural requirements of section § 552.301(e) (within fifteen business days of receiving written request for information, governmental body must submit to this office copies of specific information at issue, or representative samples). 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 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 Gov't Code § 552.302); Open Records Decision No. 319 (1982).

Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2

(1977). The applicability of section 552.102(b) can provide such a compelling reason to withhold this information. Therefore, we will address your claim under section 552.102(b).

You claim that the submitted college transcript is excepted under section 552.102(b), which excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee.” Gov’t Code § 552.102(b). This section further provides, however, that “the degree obtained or the curriculum on a transcript in the personnel file of the employee” are not excepted from disclosure. Thus, except for the information that reveals the degree obtained and the courses taken, the district must withhold the submitted transcript under section 552.102(b) of the Government Code.

We now address the information not subject to section 552.302. This office is currently in litigation with the district in *North East Independent School District v. Abbott*, Cause No. GN304566 (345th Dist. Ct., Travis County, Tex.), *appeal filed*, No. 03-04-00744-CV (Tex. App.—Austin Nov. 15, 2004). Your remaining arguments and information are similar to the issues and information involved in the pending litigation. Accordingly, we are closing our file with regard to the remaining submitted information.

In summary, except for the information that reveals the degree obtained and the courses taken, the district must withhold the submitted transcript under section 552.102(b) of the Government Code. We are closing our file with regard to the remaining information and will allow the trial court to determine whether this information must be released to the public.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

Government Code. If the governmental body fails to do one of these things, 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 Department of Public 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 the General Services 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. 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,



Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krl

Ref: ID#218903

Enc. Submitted documents

c: Mr. John S. Lopez  
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