



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 30, 2007

Ms. Lisa R. McBride
Bracewell & Guiliani LLP
711 Louisiana Street
Suite 2300
Houston, Texas 77002

OR2007-06757

Dear Ms. McBride:

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# 278811.

The North Harris Montgomery Community College District Foundation (the "foundation"), which you represent, received a request for information relating to expenses paid by the North Harris Montgomery Community College District for personnel assigned to the foundation and for information regarding the operational expenses for a specified period of time. You contend the foundation is not a governmental body subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101 through 552.147 of the Government Code. We have considered your arguments. We have also considered comments from the requestor. *See* Gov't Code § 552.304 (interested third party may submit comments stating why requested information should or should not be released).

Initially, the foundation contends that it is not a governmental body subject to the Act. The Act defines "governmental body" in pertinent part as

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.

Id. § 552.003(1)(A)(xii). “Public funds” means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts surrounding the entity. See *Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.—Waco 1998, pet. denied). In Open Records Letter Nos. 2007-06266 (2007) and 2007-06348 (2007), our office recently ruled that the foundation is a “governmental body” for purposes of the Act. Thus, we must address your claimed exceptions for the requested information.

Before doing so, however, we must address the foundation’s obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. 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. *Id.* § 552.301(e)(1)(A)-(D). You state that the foundation received the request for information on March 8, 2007. Thus, the fifteen day deadline to comply with section 552.031(e) was March 29, 2007. However, as of the date of this letter you have not submitted a copy or representative sample of the requested information, nor written comments stating the reasons why the exceptions that you raised would allow the requested information to be withheld. Accordingly, we conclude that the foundation has failed to comply with section 552.301 with respect to this information.

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. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. Gov’t Code § 552.302; see also *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); Open Records Decision No. 319 (1982). 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 (1977). Because the foundation has failed to comply with the procedural requirements of the Act, the foundation has waived all

of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions). Although the foundation also raises mandatory exceptions to disclosure, because the foundation has not submitted the information for our review, we have no basis for finding it confidential. Thus, we have no choice but to order the requested information released per section 552.302. If you believe the information is confidential and may not lawfully be released, you must challenge the 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 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).

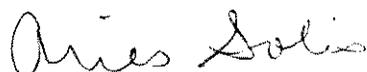
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 Office of the Attorney General 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,

A handwritten signature in cursive script that reads "Aries Solis".

Aries Solis
Assistant Attorney General
Open Records Division

AS/eeg

Ref: ID# 278811

Enc. Submitted documents

c: Mr. Fred T. Blanton
3011 E. Richey Rd.
Humble, Texas 77338
(w/o enclosures)