



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 14, 2007

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703-5399

OR2007-12028

Dear Ms. Janssen:

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# 289231.

The Austin Independent School District (the "district") received a request for eight categories of information pertaining to the employment and termination of district employees. You state that the requestor withdrew his request for the last category of information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.117, 552.1175, 552.135, and 552.147 of the Government Code. We have considered the exceptions you claim.

Initially, you inform us that the district asked the requestor to clarify categories 1 through 5 of the request. We note that a governmental body may communicate with a requestor for the purpose of clarifying or narrowing a request for information. *See Gov't Code § 552.222(b); Open Records Decision No. 663 at 2-5 (1999)*. You state that the district has not received a response to its request for clarification. Accordingly, we find that the district has no obligation at this time to release any information that may be responsive to the parts of the request for which it has sought clarification. However, if the district receives a response to its request for clarification and wishes to withhold any information to which the requestor seeks access, the district must request another decision from this office. *See Gov't Code §§ 552.301, 552.302*.

Next, we address categories 6 and 7 of the request, for which you have not sought clarification. Pursuant to section 552.301(e) of the Government Code, a governmental body

is required to submit to this office within fifteen business days of receiving the 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. Gov't Code § 552.301(e). As of this date, you have not submitted to this office information responsive to categories 6 and 7 of the request, nor have you submitted arguments explaining why the stated exceptions apply. Consequently, we find that the district has failed to comply with the procedural requirements of section 552.301 with regard to the information responsive to categories 6 and 7.

Pursuant to section 552.302, 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 section 552.302); Open Records Decision No. 319 (1982). Section 552.103 is a discretionary exception to disclosure, and therefore does not provide a compelling reason to overcome the presumption of openness. *See, e.g., 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); Open Records Decision Nos. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived), 522 at 4 (1989) (discretionary exceptions in general). Because you have not submitted any responsive information for categories 6 and 7 of the request or written comments explaining why your claimed exceptions would allow the information at issue to be withheld, we determine that the district has waived its claim under section 552.103. We note that the district also raises sections 552.101, 552.102, 552.117, 552.1175, and 552.135 of the Government Code. The applicability of these exceptions can provide compelling reasons for non-disclosure under section 552.302. In this instance, however, you have not submitted information responsive to categories 6 and 7 of the request, and we thus have no basis to conclude that these exceptions are applicable to the information at issue. We therefore conclude that the district must release the information at issue. If you believe the information at issue 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

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,



Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/jb

Ref: ID# 289231

c: Mr. Jonathan Berry
Senior Research Analyst
Center for Union Facts
1090 Vermont Avenue, North West, Suite 800
Washington, DC 20005
(w/o enclosures)