



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 6, 2007

Ms. Wanda Bamberg  
Superintendent of Schools  
Aldine Independent School District  
14910 Aldine-Westfield Road  
Houston, Texas 77032

OR2007-14565

Dear Ms. Bamberg:

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# 294089.

The Aldine Independent School District (the "district") received a request for (1) any and all lawsuits where the district is the plaintiff concerning delinquent property taxes on resale properties which resulted in favor of the defendant from September of 1999 to the present; (2) any and all cases where the district is the plaintiff with a named individual as the defendant concerning delinquent property taxes from September 1999 to the present; (3) information pertaining to any policy the district may have for paying commission or raises for tax collections; (4) the district policy for the number of days a tax payer has before a lawsuit is filed against the tax payer for delinquent taxes; (5) information pertaining to the collection of resale taxes; and (6) the quantity and cause number of any pending lawsuits concerning delinquent resale taxes. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, we must address the district's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, the 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. *See* Gov't Code § 552.301(e)(1), (2). You inform us that the district received this request on August 16, 2007. Thus, the fifteen business day deadline to comply with section 552.301(e) was September 7, 2007. As of this date, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we find that the district failed to comply with the procedural requirements of 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 requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *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). Generally speaking, 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 2 (1977). Although you raise section 552.103, this is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *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 Gov't Code § 552.103); Open Record Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). In failing to comply with section 552.301, the district has waived all of its discretionary exceptions and may not withhold any of the requested information under section 552.103. In addition, because you have failed to submit any responsive information for our review, we have no basis for finding that a compelling reason exists. Thus, to the extent responsive information existed when the district received the request, we have no choice but to order you to release the responsive information in accordance with section 552.302 of the Government Code. 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).

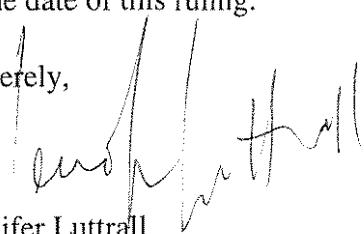
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/eeg

Ref: ID# 294089

Enc. Submitted documents

c: Mr. Ray Afshang  
300 Belmont Street  
Tomball, Texas 77375  
(w/o enclosures)