



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2007

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2007-16841

Dear Ms. Rodriguez:

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# 297804.

The Weslaco Independent School District (the "district"), which you represent, received a request for information relating to payments to your law firm and another named attorney in connection with a specified case. You seek to withhold some of the requested information under section 552.101 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5. We have considered your arguments and have reviewed the information you submitted. We also have considered the comments we received from the requestor. *See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

We initially note, and you acknowledge, that the district did not comply with section 552.301 of the Government Code in requesting this decision. Section 552.301(b) requires a governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the request for information; (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any

of the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

You concede that the district did not request this decision within its ten-business-day deadline under section 552.301(b).¹ The district also failed to timely comply with section 552.301(e).² Therefore, the submitted information is presumed to be public under section 552.302. This statutory presumption can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, the district's claims under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5 do not provide compelling reasons for non-disclosure under section 552.302. *See* Open Records Decision Nos. 676 at 12 (2002) (attorney-client privilege under Gov't Code § 552.107 or TEX. R. EVID. 503 constitutes compelling reason for non-disclosure under Gov't Code § 552.302 only if release of information would harm third party), 677 at 10 (2002) (attorney work product privilege under TEX. R. CIV. P. 192.5 does not provide compelling reason for non-disclosure if claim does not implicate third party rights). In failing to comply with section 552.301, the district has waived rules 503 and 192.5. We note that you also raise section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Although the applicability of section 552.101 can provide a compelling reason for non-disclosure, that exception does not encompass discovery privileges. *See* ORD 676 at 1-3. Therefore, the district may not withhold any of the information at issue under section 552.101 on the basis of rule 503 or rule 192.5. You also contend that release of the information at issue could harm the interests of third parties because the information is related to a lawsuit in which certain defendants have been sued in their individual capacities. The determination of whether the interests of third parties constitute a compelling reason to withhold information under rule 503 or rule 192.5 is made on a case-by-case basis. *See* ORD 676 at 12. Having considered your arguments, we find that you have not demonstrated the existence of a compelling reason to withhold any of the information at issue under rule 503 or rule 192.5. We therefore conclude that the submitted information must be released in its entirety.

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

¹In this instance, the district's deadline under section 552.301(b) was October 8, 2007. The district requested this decision on October 16.

²The district's fifteen-business-day deadline under section 552.301(e) was October 15, 2007.

governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

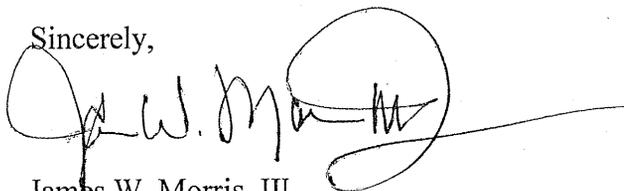
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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 black ink, appearing to read 'James W. Morris, III', with a large circular flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ma

Ref: ID# 297840

Enc: Submitted documents

c: Mr. Manuel Rodriguez
Route 9 Box 3822
Weslaco, Texas 78596
(w/o enclosures)