



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 1, 2010

Ms. Angela H. Robinson  
Law, Snakard, & Gambill, P.C.  
Attorney for Tarrant County College District  
1600 West Seventh Street, Suite 500  
Fort Worth, Texas 76102

OR2010-01467

Dear Ms. Robinson:

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# 364918.

The Tarrant County College District (the "district"), which you represent, received a request for information pertaining to the resignation or dismissal of two named individuals. You state some of the requested information has been released. You take no position with respect to the public availability of the submitted information; however, we have received comments from a representative of one of the named individuals (the "representative") arguing against the disclosure of this information. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the district'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 it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). 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 id.* § 552.301(e). In this instance, the district received

the request for information on September 30, 2009. However, you did not request a ruling from this office or submit a copy or representative sample of the information requested until November 23, 2009. Thus, we find the district failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the information is public and must be released. Information presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Normally, 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. *See* Open Records Decision No. 150 at 2 (1977). Because third party interests are at stake, we will address whether the submitted information must be withheld to protect the interest of the third party.

The representative argues the submitted information is excepted from disclosure under sections 552.103, 552.107 and 552.111 of the Government Code.<sup>1</sup> Section 552.103 excepts from public disclosure under the Act “information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party[.]” Gov’t Code § 552.103(a). Section 552.107 excepts from disclosure “information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct.” *Id.* § 552.107(1). Section 552.111 excepts from disclosure “[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]” *Id.* § 552.111. As previously noted, the district takes no position with respect to the public availability of the submitted information. A governmental body has the discretion to assert that information requested under the Act is excepted from release under sections 552.103, 552.107, and 552.111 of the Government Code. *See id.* § 552.007; Open Records Decision No. 549 at 6 (1990). Because these sections are discretionary exceptions that only protect the governmental body’s interests, they may be waived. *See 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) (litigation exception does not implicate third-party rights and may be waived by governmental body), 677 at 10 (2002) (claim of attorney-work-product-privilege under section 552.111 or Texas Rule of Civil Procedure 192.5 may be waived), 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 may

---

<sup>1</sup>Although the representative argues the submitted information is privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, we note that, in this instance, sections 552.107 and 552.111 of the Government Code are the proper exceptions for this type of information. *See* Open Records Decision Nos. 677 (2002), 676 at 6 (2002).

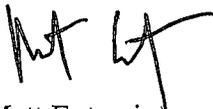
be waived); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). As the district does not raise sections 552.103, 552.107, or 552.111, the submitted information may not be withheld pursuant to any of these sections.

We note section 552.137 of the Government Code states “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its public disclosure.<sup>2</sup> Gov’t Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). We have marked an e-mail address belonging to a member of the public. The district must withhold the marked e-mail address under section 552.137 of the Government Code, unless the district receives consent for its release.<sup>3</sup> As no further exception to disclosure of the remaining information has been raised, this information must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Matt Entsminger  
Assistant Attorney General  
Open Records Division

MRE/rl

---

<sup>2</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

Ref: ID# 364918

---

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

cc: Mr. Paul D. Rich  
The Rich Law Group, LLC  
Attorneys & Mediators  
3500 Oak Lawn Avenue, Suite 205  
Dallas, Texas 75219  
(w/o enclosures)