



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 28, 2010

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Gallegos, and Green, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2010-06045

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# 378831.

The D'Hanis Independent School District (the "district"), which you represent, received a request for the requestor's client's personnel file; all other documents concerning the requestor's conduct or performance; and documents created or compiled during the investigation of the requestor's client, except for documents protected by the attorney-client privilege. You claim the requested information is excepted from disclosure under sections 552.101 through 552.148 of the Government Code. We have considered your claims.

Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. 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. Gov't Code § 552.301(e). You inform us the district received the request for information on February 19, 2010. However, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, nor have you submitted a copy or representative sample of the information requested.

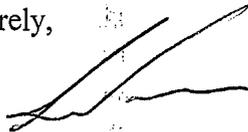
Consequently, we find the district failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *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). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). By failing to comply with the procedural requirements of the Act, the district waived its discretionary claims against disclosure. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for a decision resulted in waiver of discretionary exceptions). Further, although the district also raises mandatory exceptions to disclosure that may not be waived, you have not submitted any information for our review. Therefore, we have no basis for finding any information confidential. Thus, we have no choice but to order the district to release the requested information. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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, 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 378831

Enc. Submitted documents

c: Requestor
(w/o enclosures)