



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2010

Ms. Debra G. Rosenberg
Atlas & Hall, L.L.P.
P.O. Box 3725
McAllen, Texas 78501

OR2010-08270

Dear Ms. Rosenberg:

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# 381719.

The McAllen Independent School District (the "district"), which you represent, received a request for information concerning a specified incident.¹ You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim.

We address the district's procedural 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). As of the date of this letter, you have not submitted to this office a copy of the written request for information, comments explaining why the stated exception applies, a signed statement or sufficient evidence showing the date the governmental body received the written request,

¹In describing the request for information, we rely on the information communicated to us by an attorney representing the district.

or a copy or representative sample of the information at issue. Consequently, 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 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. The requested information is therefore 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; *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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Section 552.108 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived by the governmental body. Thus, this exception does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). Because you have not submitted a copy of the written request for information, comments explaining why the stated exception applies, a signed statement or sufficient evidence showing the date the governmental body received the written request, or a copy or representative sample of the information at issue, we determine that the district has waived its claim under section 552.108 of the Government Code. Thus, we have no choice but to order the information at issue released pursuant to section 552.302.²

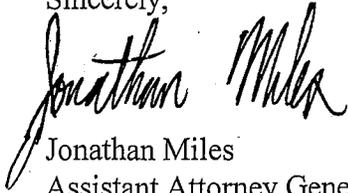
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

²We note, however, this ruling does not address the applicability of FERPA to the requested information. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>. Should the district determine that all or portions of the requested information consists of "education records" that must be withheld under FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act.

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,

A handwritten signature in cursive script that reads "Jonathan Miles". The signature is written in black ink and is positioned above the printed name.

Jonathan Miles
Assistant Attorney General
Open Records Division

JM/jb

Ref: ID# 381719

c: Requestor