



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2010

Ms. Michelle L. Bonton
Principal/Superintendent
The Rhodes School
12822 Robert E. Lee Road
Houston, Texas 77044

OR2010-10796

Dear Ms. Bonton:

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# 387294.

The Rhodes School (the "school") received a request for (1) complaints or disciplinary actions for the requestor and two named individuals brought on by any administrator at the school; (2) personnel files for three named individuals; (3) files containing teacher's financial pay and qualification certificates for the three named individuals; (4) instructional materials, lesson plans, or any other materials used by one of the named individuals from January 3, 2010 to May 5, 2010; (5) all related party transactions affiliated with one of the named individuals and the school; (6) contracts with outside companies, including businesses with any board member or payments made to any board member for services rendered; and (7) names of all relatives who have worked for the school in the past or who currently work for the school, their positions, salaries, and dates of hire. You state you have released the requestor's personnel file. You claim some of the requested information is subject to section 552.027 of the Government Code. We understand you to claim that the remaining requested information is excepted from disclosure under sections 552.102, 552.103, 552.104 and 552.117 of the Government Code. We have considered your arguments.

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

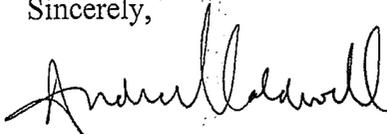
parts of the documents. Gov't Code § 552.301(e). You received the request for information on May 5, 2010. However, as of the date of this letter, you have not submitted to this office a copy or representative sample of the information requested. Consequently, we find the school failed to comply with 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 that 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 school 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 sections 552.102 and 552.117 can provide compelling reasons for non-disclosure, 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 school 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,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 387294

Enc. Submitted documents

c: Requestor
(w/o enclosures)