



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2010

Mr. Michael Munk
Garza County Attorney
300 West Main
Post, Texas 79356

OR2010-13831

Dear Mr. Munk:

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# 393902.

The Garza County Regional Juvenile Detention Center (the "center") received a request for sixteen categories of information about center employees. Although you claim no specific exceptions under the Act, we understand you to claim that the requested information may contain information excepted under the Act or be confidential under the doctrine of common-law privacy as incorporated into section 552.101 of the Act.

We must address the center's 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 comments explaining why any exceptions in the Act apply, nor have you submitted a copy or representative sample of the information requested. Consequently, we find the center 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 the requested information is public and must be released. Information that is 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; *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, 381-82 (Tex. App.—Austin 1990, no writ)

(governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because the center has failed to comply with the requirements of the Act, the center has waived all of its claimed discretionary exceptions to disclosure in the Act. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although we also understand the center to raise the Act's mandatory exceptions to disclosure and the doctrine of common-law privacy, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. We, therefore, conclude the center must release the requested information to the requestor pursuant to section 552.302.¹ 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,



Bob Davis
Assistant Attorney General
Open Records Division

RSD/tp

¹We note that if any of the employees at issue properly elected, prior to the center's receipt of the request, to keep their home address or home telephone number confidential, then section 552.024(c) of the Government Code authorizes the center to withhold those employees' home address or home telephone number without the necessity of requesting a decision from this office. Gov't Code § 552.024(c); *see id.* §§ 552.024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to the requestor), .024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general).

Ref: ID# 393902

Enc. Submitted documents

c: Requestor