



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2010

Mr. Michael B. Gary
Assistant General Counsel
Harris County Appraisal District
P.O. Box 920975
Houston, Texas 77292-0975

OR2010-15902

Dear Mr. Gary:

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# 397334 (HCAD #10-00564).

The Harris County Appraisal District (the "district") received a request for copies of the 2009 and 2010 Appraisal Review Board hearings pertaining to a specified account. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We must address the district's procedural obligations under the Act. 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(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* Gov't Code § 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, you state the district received the request for information on July 15, 2010. Thus, the district's ten-business-day deadline was July 29, 2010, and the fifteen-business-day deadline was August 5, 2010. However, you did not request a ruling from this office or submit the information at issue until August 12, 2010. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). 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 the requirements of section 552.301 results in the legal presumption the 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 (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. *See* Open Records Decision No. 150 at 2 (1977). You raise section 552.103 of the Government Code, which is discretionary in nature. Section 552.103 serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decisions Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions). Although you acknowledge the district failed to comply with section 552.301, you assert because the district has a clear litigation interest in the submitted information, a compelling reason to withhold it under section 552.103 exists. Because section 552.103 is a discretionary exception, the district waived any assertions under this section by its failure to comply with section 552.301. Further, you have not provided us with any other source of law or asserted third party interests may be at stake. Consequently, we find the district failed to establish a compelling reason exists to withhold the submitted information. Thus, the district may not withhold the submitted information pursuant to section 552.103. As you raise no further exceptions to disclosure of the submitted information, the district must release it 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, 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/tp

Ref: ID# 397334

Enc. Submitted documents

c: Requestor
(w/o enclosures)