



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 9, 2010

Mr. Miles T. Bradshaw
Karczewski Bradshaw, L.L.P.
315 North Church Street
Nacogdoches, Texas 75961

OR2010-16966

Dear Mr. Bradshaw:

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# 399427.

The Houston Community College System (the "system"), which you represent, received a request for information related to (1) all documents pertaining to meetings during which discussion was held on a specified subject matter, and (2) "a report on monies spent in print media advertising for all media sources in the 2009-2010 fiscal year." You state that information responsive to item two of the request is being provided to the requestor. You claim that information responsive to item one of the request is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, 552.116, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the system's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Under section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure under the Act 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). The system requested a ruling from this office on September 3, 2010. However, you did not

submit the specific information requested or representative samples until October 28, 2010. Thus, we find the system 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 section 552.301 results in the legal presumption the information is public and must be released. Information 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). Normally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977).

Although you raise sections 552.103, 552.107, 552.108, 552.111, and 552.116 of the Government Code, these exceptions are discretionary in nature. They serve only to protect a governmental body's interests and may be waived; as such, they do not constitute compelling reasons 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 Decision Nos. 677 at 10 (2002) (attorney work-product privilege under section 552.111 is not compelling reason to withhold information under section 552.302), 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 663 at 5 (1999) (governmental body may waive sections 552.107 and 552.111), 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). In failing to comply with section 552.301, the system has waived its claims under sections 552.103, 552.107, 552.108, 552.111, and 552.116 of the Government Code. Therefore, none of the submitted information may be withheld under those exceptions.

Additionally, you raise section 552.101 of the Government Code in conjunction with the informer's privilege. Because the purpose of the informer's privilege is to protect the flow of information to a governmental body, rather than to protect the interests of a third person, the informer's privilege, unlike other claims under section 552.101, can be waived. *See* Open Records Decision No. 549 at 6 (1990). Therefore, the informer's privilege may not serve as a compelling reason for overcoming the presumption of openness under section 552.302, and the system may not withhold any of the submitted information under section 552.101 on that basis.

However, because section 552.135 of the Government Code can provide a compelling reason to overcome this presumption, we will consider your arguments under this exception. Furthermore, the need of a governmental body, other than the agency that is seeking an open records decision, to withhold information under 552.108 of the Government Code can provide a compelling reason to withhold information from disclosure. *See* Open Records

Decision No. 586 at 3 (1991). Because the Harris County District Attorney (the “district attorney”) objects to the release of the information at issue under section 552.108 of the Government Code, we will consider whether the system may withhold the submitted information under section 552.108 on behalf of the district attorney.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district attorney states the responsive information pertains to a pending criminal investigation. Based on this representation and our review, we conclude that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the system may withhold the responsive information under section 552.108(a)(1) of the Government Code on behalf of the district attorney. As our ruling is dispositive, we do not address your remaining claim.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 399427

Enc. Submitted documents

c: Requestor
(w/o enclosures)