



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 14, 2011

Mr. Ronn P. Garcia
Underwood Law Firm
P.O. Box 16197
Lubbock, Texas 79490-6197

OR2011-02189

Dear Mr. Garcia:

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# 409087.

The Education Service Center Region 16 (the "center"), which you represent, received a request for the requestor's personnel file, including information related to the requestor's termination. You state that "most" of the responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code and privileged under rule 503 of the Texas Rules of Civil Procedure. We have considered your claims and reviewed the submitted information.

We begin by noting that some of the submitted documents are not responsive to the instant request for information, as they were created after the date that the center received the request. This ruling does not address the public availability of any information that is not responsive to the request, and the center need not release that information in response to this request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986) (governmental body not required to disclose information that did not exist at time request was received).

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. 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). The center states it received the request for information on November 23, 2010. Accordingly, the center's ten-business-day deadline was December 9, 2010. Although the center's request for a ruling and claim under section 552.101 of the Government Code was timely submitted to this office, the center did not raise its claims under section 552.107 of the Government Code and rule 503 of the Texas Rules of Evidence until December 16, 2010.¹ Consequently, we find the center failed to comply with the procedural requirements of section 552.301 with respect to its claims under section 552.107 and rule 503.

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, 381-82 (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 compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

Section 552.107 and rule 503 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* Open Records Decision No. 676 at 12 (claim of attorney-client privilege under section 552.107 or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights); *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 center has waived its claims under section 552.107 of the Government Code and rule 503 of the Texas Rules of Evidence. Therefore, none of the submitted information may be withheld under section 552.107 or rule 503.

You also raise section 552.101 of the Government Code, which ordinarily can provide a compelling reason to withhold information. In this instance, however, you have submitted no arguments in support of the applicability of this exception. *See* Gov't Code § 552.301(e)(1)(A). As you have provided this office with no basis for finding information

¹We note section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

confidential under this exception, the submitted information must be released to the requestor.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, 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# 409087

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²Some of the documents marked for release contain or consist of confidential information that is not subject to release to the general public. See Gov't Code § 552.352. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because some of the information is confidential with respect to the general public, if the center receives a future request for this information from an individual other than the requestor or the requestor's authorized representative, the center should again seek our decision.