



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 17, 2011

Mr. Tony Resendez
Walsh, Anderson, Brown, Gallegos and Green, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2011-02491

Dear Mr. Resendez:

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# 409403.

The Donna Independent School District (the "district"), which you represent, received a request for legal fees and retainers accrued in the following fiscal years: 2006-2007, 2007-2008, 2008-2009, 2009-2010, and thus far in 2010-2011. You claim that the requested information is excepted from disclosure under sections 552.101 through 552.148 of the Government Code. We have considered the exceptions you claim.

We must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) of the Government Code requires submission 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 written request was received, 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 state the district received the request for information on November 23, 2010. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines

under the Act. You state the district was closed for business on November 25 and 26, 2010; therefore, the district's fifteen-business-day deadline was December 16, 2010. The district raised sections 552.101 through 552.148 of the Government Code and submitted a copy of the written request for information in correspondence to this office that was postmarked December 9, 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). However, as of the date of this letter, the district has not submitted to this office a brief containing written comments stating why the raised exceptions apply or a copy or representative sample of the requested information at issue. Thus, we find the district has failed to comply with the requirements mandated by subsection 552.301(e) of the Government Code.

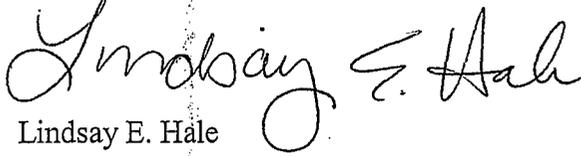
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because the district has failed to comply with the requirements of the Act, the district has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the district also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information confidential by law. Therefore, we find the district must release the requested information to the requestor pursuant to section 552.302 of the Government Code. 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,

A handwritten signature in cursive script that reads "Lindsay E. Hale". The signature is written in black ink and is positioned above the typed name.

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/em

Ref: ID# 409403

Enc. Submitted documents

c: Requestor
(w/o enclosures)