



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 15, 2011

Mr. Joe Aguilar
Interim General Manager
Hidalgo County Irrigation District Number Six
P.O. Box 786
Mission, Texas 78573

OR2011-10068

Dear Mr. Aguilar:

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# 426596.

You inform us the Hidalgo County Irrigation District Number Six (the "district") received a request for information pertaining to the investigation of improper conduct by a named district manager.¹ You claim the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which 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(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. *See* Gov't Code § 552.301(e)(1)(C). You inform us the district received the request for information on May 23, 2011; however, as of the date of this ruling, the district has not submitted a copy of the written request for information. Thus, the district failed to comply with the procedural requirements mandated by section 552.301(e)(1)(C).

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 requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no

¹We take our description of the requested information from your brief.

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 under other law. Open Records Decision No. 150 (1977). Sections 552.103 and 552.107 of the Government Code serve only to protect a governmental body's interests. As such, the district's claims under sections 552.103 and section 552.107 are not compelling reasons to overcome the presumption of openness. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 11-12 (2002) (claim of attorney-client privilege under section 552.107 or Texas Rule of Evidence 503 does not provide compelling reason for purposes of section 552.302 if it does not implicate third-party rights), 549 at 6 (1990); see also Open Records Decision No. 522 (1989) (discretionary exceptions in general). Furthermore, the attorney client privilege under Texas Rule of Evidence is not a compelling reason to overcome the presumption of openness in section 552.302. ORD 676 at 11-12. Therefore, none of the submitted information is excepted from release on these bases. Sections 552.101 and 552.117 of the Government Code can provide compelling reasons to overcome the presumption of openness.² Therefore, we will consider whether these sections require the district to withhold the submitted documents. However, we must also address the applicability of section 552.022 to this information.

The submitted information consists of a completed report. Under section 552.022(a)(1) of the Government Code, a completed report, audit, evaluation, or investigation made of, for, or by a governmental body is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. Although you assert this information is excepted under sections 552.103 and 552.107 of the Government Code, these sections are discretionary exceptions under the Act and do not constitute "other law" for purposes of section 552.022. See *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022), 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); see also Open Records Decision No. 522 (1989) (discretionary exceptions in general). Thus, because sections 552.103 and 552.107 are neither "other law" for purposes of section 552.022 nor "compelling" for purposes of section 552.302, the district may not withhold the information under those exceptions.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You do not cite to any specific law, and we are not aware of any, that makes any portion of the

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); see, e.g., Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

submitted information confidential under section 552.101. *See* Open Records Decision No. 478 at 2 (1987) (statutory confidentiality requires express language making information confidential or stating information shall not be released to public). Therefore, we conclude the district may not withhold any portion of the submitted information under section 552.101 of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Such information may not be withheld for individuals who did not make a timely election. We have marked information that must be withheld if section 552.117(a)(1) applies.

To conclude, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employees at issue made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The district must release the remaining information 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/eb

Ref: ID# 426596

Enc. Submitted documents

c: Requestor
(w/o enclosures)