



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 15, 2011

Ms. Jessica L. Saldivar  
Assistant General Counsel  
Houston Community College  
3100 Main Street  
Houston, Texas 77002

OR2011-16810

Dear Ms. Saldivar:

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# 436128.

Houston Community College ("HCC") received a request for (1) "summary payment data" for three named individuals and twelve named entities and (2) invoices and change orders for two specified projects.<sup>1</sup> In regards to item one, you state HCC only has information responsive for two of the named entities.<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code.<sup>3</sup> We have

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<sup>1</sup>We note HCC sought and received clarification from the requestor regarding the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

<sup>3</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.022 of the Government Code, section 552.022 is not a statute that makes information confidential. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are

considered the exceptions you claim and reviewed the submitted representative sample of information. We have also received and considered comments submitted by the requestor's attorney. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, we note you have only submitted information responsive to item one of the instant request. Although you state HCC submitted a representative sample of information, no portion of the submitted representative sample pertains to invoices or change orders pertaining to the two specified projects. Thus, we find the submitted information is not representative of the information sought in item two of the request. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this opinion does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public). Because you have not submitted information responsive to item two of the request for our review, we assume you have released it to the extent it existed on the date you received the request. *See id.* §§ 552.301-.302. If you have not released this information, you must do so at this time. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we must address HCC'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. Section 552.301(e-1) provides the following:

A governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) shall send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

Gov't Code § 552.301(e-1). Pursuant to section 552.303 of the Government Code, we requested a copy of the letter HCC provided to the requestor as required by

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expressly confidential under "other law." *See* Gov't Code § 552.022. Furthermore, since you have not submitted any other arguments concerning section 552.101, we assume you no longer urge this exception. *See* Gov't Code §§ 552.301(b), (e), .302.

section 552.301(e-1).<sup>4</sup> Upon review, we find the submitted letter to the requestor demonstrates HCC redacted its discussion of the claimed exceptions, including information that does not disclose or contain the substance of the information requested. Consequently, we find HCC failed to comply with the requirements of section 552.301(e-1).

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 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 claim section 552.107, this is a discretionary exception to disclosure that protects only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). In failing to comply with section 552.301(e-1), HCC has waived this exception. *See* Gov't Code § 552.302. Therefore, HCC may not withhold the submitted payment information under section 552.107(1) of the Government Code.

Section 552.108 is also a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You state the United States Department of Education Office of Inspector General (the "DOE-OIG") asserts a law enforcement interest in the submitted information. Therefore, we will consider whether HCC may withhold the submitted payment information on behalf of the DOE-OIG under section 552.108.

Next, we note the submitted payment information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

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<sup>4</sup>*See* Gov't Code §552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, § 2 (to be codified as an amendment to Gov't Code §552.022(a)). Although you assert the submitted payment information is excepted from disclosure under section 552.108, this section is discretionary and does not make information confidential under the Act. *Id.* §§ 3-26, 28-37 (providing for “confidentiality” of information under specified exceptions); *see* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, HCC may not withhold the submitted payment information under section 552.108. As you raise no other exceptions to disclosure, the submitted payment information must be released.

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](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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/agn

Ref: ID# 436128

Enc. Submitted documents

c: Requestor  
(w/o enclosures)