



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 16, 2011

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

OR2011-16915

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# 436227.

Houston Community College (the "college") received a request for a record of all payments made to a named company. You claim the requested information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we must address the college's responsibilities under the Act. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether information is excepted from public disclosure under the Act. *See* Gov't Code § 552.301(a). Section 552.301(e)(1)(A) requires the governmental body to submit to this

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<sup>1</sup>Although you claim section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, we note section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2000), 575 at 2 (1990). Accordingly, we do not address your assertion of section 552.101 of the Government Code.

<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

office “written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld[.]” *Id.* § 552.301(e)(1)(A). Section 552.301(e-1) provides as follows:

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.

*Id.* § 552.301(e-1). We note the college has redacted substantial portions of its arguments under sections 552.107 and 552.108 of the Government Code from the requestor’s copy of the college’s comments. We further note the redacted portions of the college’s comments neither disclose nor contain the substance of the submitted information. We, therefore, conclude the college failed to comply with section 552.301(e-1) of the Government Code in requesting a decision under sections 552.107 and 552.108 of the Government Code.

Generally, a governmental body’s failure to comply with section 552.301 results in the waiver of its claims under the exceptions at issue, 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 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). In general, 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). Section 552.107(1) is a discretionary exception to disclosure that protects 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) with regard to its claim under section 552.107(1), the college has waived this exception because it is not a compelling reason to withhold the requested information. *See* Gov’t Code § 552.302. Therefore, the college may not withhold the requested 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). Nevertheless, 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

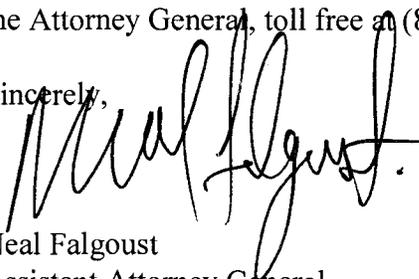
section 552.302. *See* Open Records Decision No. 586 at 2-3 (1991). You state the United States Department of Education Office of Inspector General (“DOE-OIG”) asserts a law enforcement interest in the requested information. Therefore, we will consider whether the college may withhold the requested information on behalf of the DOE-OIG under section 552.108 of the Government Code.

The requested information pertains to the expenditure of public or other funds by the college. This information is deemed public under the Act, unless “expressly confidential under other law.” Gov’t Code § 552.022(a)(3). Section 552.108 of the Government Code is not “other law” that makes information expressly confidential for purposes of section 552.022(a)(3). *See* ORD 177 at 3. Therefore, the college may not withhold the requested information under section 552.108 of the Government Code. As you claim no other exceptions to disclosure, the requested 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,



Neal Falgoust  
Assistant Attorney General  
Open Records Division

NF/agn

Ref: ID# 436227

Enc. Submitted documents

c: Requestor  
(w/o enclosures)