



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 28, 2012

Mr. Cobby A. Caputo  
For Austin Community College  
Bickerstaff Heath Delgado Acosta, L.L.P.  
3711 South MoPac Expressway  
Building One, Suite 300  
Austin, Texas 78746

OR2012-03028

Dear Mr. Caputo:

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# 446646.

Austin Community College (the "college"), which you represent, received a request for correspondence sent to or by anyone in the purchasing department and certain named individuals regarding "RFP No. 200-12003VJ T-Shirts, Apparel and Promotional Items." You state the college will release some of the information. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

Initially, we must address the requestor's contention that the college failed to comply with its procedural obligations under the Act in asking this office for a ruling. Section 552.301 of the Government Code describes the deadlines imposed on a governmental body that

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, this office has concluded section 552.101 does not encompass other exceptions found within the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). Additionally, a governmental body is required to submit 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 governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). As of the date of this letter, the college has not submitted to this office a signed statement or sufficient evidence showing the date the college received the written request for information. *See* Gov't Code § 552.301(e)(1)(C). Thus, we find the college failed to comply with the procedural requirements of section 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. *See id.* § 552.302. Information that is 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 (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 exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Although you claim section 552.107 of the Government Code, we note this a discretionary exception to disclosure intended to protect a governmental body's interests and may be waived. ORD 676 at 11–12 (attorney-client privilege under section 552.107 subject to waiver). As the college has failed to meet its procedural obligations under the Act, we find it may not withhold any of the submitted information under section 552.107 of the Government Code. As you raise no other exceptions to disclosure, the submitted information must be released.<sup>2</sup>

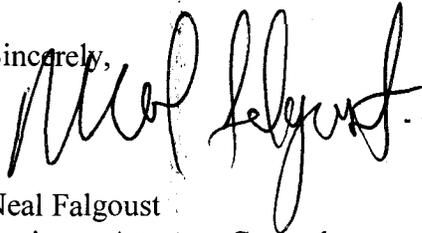
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<sup>2</sup>We note the requestor has a right of access to her own e-mail address in this instance. If the college receives another request for this same information from a different requestor, we note Open Records Decision No. 684 (2009) permits a governmental body to redact an e-mail address of a member of the public under section 552.137 of the Government Code without the necessity of seeking a ruling from this office. *See* Open Records Decision No. 684 (2009).

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# 446646

Enc. Submitted documents

c: Requestor  
(w/o enclosures)