



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

February 29, 2012

Ms. Tammy Dowdy
Director of Communications
Dickinson Independent School District
P.O. Drawer Z
Dickinson, Texas 77539

OR2012-03105

Dear Ms. Dowdy:

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# 448268.

The Dickinson Independent School District (the "district") received a request for the district's current electricity agreements and electricity bills from a specified time period. Although the district takes no position regarding whether the requested information is excepted from disclosure, you state its release may implicate the proprietary interests of the Texas General Land Office (the "GLO"). Accordingly, you notified the GLO of the request and its right to submit arguments to this office. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have received comments from the GLO. We have considered the submitted arguments and reviewed the submitted information.

Initially, we must address the district's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(b), within ten business days after receiving the request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. *See* Gov't Code § 552.301(b). Pursuant to section 552.301(e), within fifteen business days of receipt of the request the governmental body must submit to this office (1) 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 id.* § 552.301(e). You inform us the district received the instant request for information on December 2, 2011, and you do not inform us that the district was closed on any subsequent

business days. Thus, the district's ten-business-day deadline was December 16, 2011, and the fifteen-business-day deadline was December 23, 2012. However, the required information was received by this office in envelopes postmarked January 11, 2012 and February 12, 2011. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the district failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists 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, 381-82 (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); *see also* Open Records Decision No. 630 (1994). Generally, 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. Open Records Decision No. 150 at 2 (1977). In this instance, third-party interests are at stake, and we note portions of the submitted information are subject to section 552.136 of the Government Code, which provides a compelling reason to withhold information. Therefore, we will consider the GLO's arguments and the applicability of section 552.136.

We note you have not submitted the requested electricity agreements. To the extent this information existed on the date the district received the request, we assume you have released it. *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). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302. We note the GLO seeks to withhold the requested agreements under sections 552.104 and 552.110 of the Government Code. However, because the district has not submitted these agreements for our review, we do not address the GLO's arguments against their disclosure.

The GLO raises section 525.110 of the Government Code for the submitted electricity bills. However, section 552.110 is designed to protect the interests of third parties, not the interests of governmental bodies. Thus, we do not address the GLO's arguments under section 552.110.

We note portions of the submitted electricity bills are protected by section 552.136 of the Government Code.¹ Section 552.136 of the Government Code provides that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument,” and includes an account number. *Id.* § 552.136(a). Therefore, the district must withhold the account numbers we have marked under section 552.136. As no additional exceptions to disclosure have been raised for the remaining information, it must be released 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,



Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eb

Ref: ID # 448268

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)