



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 14, 2012

Mr. John J. Janssen, J.D., Ph.D.  
General Counsel  
Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2012-09202

Dear Mr. Janssen:

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# 458285.

The Corpus Christi Independent School District (the "district") received a request for information related to the selection of a principal for a particular district high school, including the ratings for each rater/interviewer for each interviewee in each category and the outcome of the selection process. You state some of the requested information either has been or will be released. Although you take no position with regard to the public availability of the submitted information, you believe it may implicate the proprietary interests of Gallup, Inc. You inform us Gallup was notified of the request for the submitted information and of its right to submit arguments to this office as to why the information should not be released.<sup>1</sup> You claim other responsive information is excepted from disclosure under sections 552.101 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

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<sup>1</sup>See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

We first note an interested third party is allowed ten business days from the date of its receipt of the governmental body's notice under section 552.305 of the Government Code to submit its reasons, if any, as to why information relating to the party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, this office has received no correspondence from Gallup. Thus, as Gallup has not demonstrated any of the submitted information is proprietary for purposes of the Act, the district may not withhold any of the information at issue on the basis of any interest Gallup may have in the information. *See id.* § 552.110(a)-(b); Open Records Decision Nos. 552 at 5 (1990), 661 at 5-6 (1999). Therefore, as the district does not claim an exception to disclosure of the information at issue, the submitted information must be released.

We next note the district did not comply with section 552.301(e) of the Government Code in requesting this decision. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(e) requires the governmental body to submit to this office, no later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments stating why the governmental body's claimed exceptions apply to the information at issue and (2) the specific information at issue or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A), (D). As the district received the present request for information on April 16, 2012, your fifteen-business-day deadline under section 552.301(e) was April 30. In your request for this decision, you stated you would be submitting arguments in support of your assertion of sections 552.101 and 552.111 of the Government Code, along with the information you seek to withhold under those exceptions. As of the date of this decision, we have received no further correspondence from the district. Thus, with regard to any information you seek to withhold under sections 552.101 and 552.111, you have failed to comply with section 552.301 in requesting this decision.

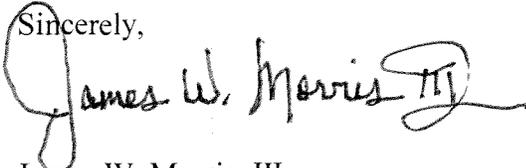
If a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. 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). This statutory presumption can generally be overcome when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.111 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (statutory predecessor to Gov't Code § 552.111 subject to waiver). In failing to comply with section 552.301, you have waived section 552.111 and may not withhold any information under that exception. *See* Open Records Decision No. 663 at 5 (1999) (waiver of discretionary exceptions). You also claim section 552.101 of the Government Code, which is a mandatory exception that can provide a compelling reason for

non-disclosure. See Gov't Code § 552.101; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions generally). But because you have not submitted any information you seek to withhold to this office, we have no basis to conclude any such information is confidential under section 552.101. Thus, we have no choice but to order you to release the information in question in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/bs

Ref: ID# 458285

Enc: Submitted documents

c: Requestor  
(w/o enclosure)

Ms. Judy Bailey  
SRI Administrator  
Gallup, Inc.  
1001 Gallup Drive  
Omaha, Nebraska 68102  
(w/o enclosure)