



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2012

Ms. Jessica L. Saldivar
Assistant General Counsel
Houston Community College
P.O. Box 667517
Houston, Texas 77266-7517

OR2012-10923

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# 458906.

The Houston Community College (the "college") received a request for information pertaining to a specified discrimination complaint. You state you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we must address the college's obligations under the Act. Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Gov't Code § 552.301. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. *Id.* § 552.301(b). You state the college

¹Although you initially raised section 552.107 of the Government Code, you have provided no arguments in support of the applicability of this exception. Therefore, this decision does not address section 552.107 of the Government Code. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide written comments in support of applicability of each exception it claims).

²We 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 that submitted to this office.

received the request for information on April 25, 2012. Accordingly, the tenth business day after the receipt of the request was May 9, 2012. Although you timely raised sections 552.101 and 552.103 in your initial request for a decision to this office, you did not raise section 552.111 until May 16, 2012. Thus, with respect to section 552.111, the college failed to comply with the procedural requirements mandated by section 552.301(b).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the waiver of its claims under the exception 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). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). Although the college seeks to withhold the submitted information under section 552.111 of the Government Code, section 552.111 is a discretionary exception to disclosure and does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision Nos. 663 at 5 (1999) (waiver of discretionary exceptions), 470 (1987) (deliberative process privilege under statutory predecessor to section 552.111 subject to waiver). Because the college failed to comply with the procedural requirements of the Act with respect to section 552.111, the college has waived its claim under this exception, and no information may be withheld on this basis.

You state the submitted information pertains to a completed investigation. Thus, we note the information at issue is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[.]” unless it is excepted from disclosure under section 552.108 of the Government Code or is expressly made confidential under the Act or other law. Gov't Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure and does not make information confidential under the Act. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 does not make information confidential for the purposes of section 552.022. Therefore, the college may not withhold the submitted information under section 552.103 of the Government Code. You also claim section 552.101 of the Government Code. Because this section can make information confidential under the Act, we will address the applicability of this exception to the submitted information.

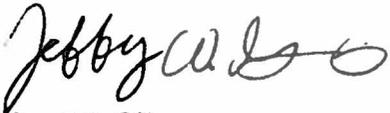
Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which

protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681–82. The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find you have failed to demonstrate how any of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the college may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy. As you raise no further exceptions to disclosure, the submitted 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, 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,



Jeffrey W. Giles
Assistant Attorney General
Open Records Division

JWG/dls

Ref: ID# 458906

Enc. Submitted documents

c: Requestor
(w/o enclosures)