



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 6, 2012

Mr. Richard A Illmer
Counsel for Texas Southmost College
Brown McCarroll, L.L.P.
2001 Ross Avenue, Suite 2000
Dallas, Texas 75201-2995

OR2012-14105

Dear Mr. Illmer:

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# 464452.

Texas Southmost College (the "college"), which you represent, received a request for information from 2010-2012 regarding college "facilities that indicate and identify used, unused, excess or necessary additional campus space and/or real property."¹ You claim the requested information is excepted from disclosure under sections 552.101 through 552.153 of the Government Code. We have considered the exceptions you claim.

Initially, we note some or all of the responsive information to the present request may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-13933 (2012). We have no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, to the extent the responsive information is identical to the information previously requested and ruled upon by this office in the prior ruling, the college must continue to rely on that ruling as a previous determination and withhold or release the responsive information in accordance with Open Records Letter No. 2012-13933. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first

¹As you did not submit a copy of the written request for information, we take our description from your brief.

type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the responsive information is not encompassed by Open Records Letter No. 2012-13933, we must address your obligations under section 552.301 of the Government Code.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records 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. Gov't Code § 552.301(e). You inform us the college received the request on June 13, 2012. Accordingly, the college's fifteen-business-day deadline was July 5, 2012. As of the date of this letter, you have not submitted arguments stating the reasons why the stated exceptions apply, a copy of the request for information, or a copy or representative sample of the responsive information. Therefore, we find the college failed to comply with the requirements of section 552.301(e).

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 requested information is public and must be released 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, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when information is confidential by law or third-party interests are at stake. Open Records Decision No. 150 (1977). Because the college failed to comply with the requirements of the Act, the college has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 665 at 2 n.5 (2000) (untimely request for decision results in waiver of discretionary exceptions). Although the college also raises mandatory exceptions to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the requested information confidential by law. Thus, we have no choice but to order you to release any requested information that is not encompassed by Open Records Letter No. 2012-13933 in accordance with section 552.302 of the Government Code.

In summary, to the extent the requested information is identical to the information submitted in Open Records Letter No. 2012-13933, the college must rely on that ruling as a previous determination and withhold or release the responsive information in accordance with it. However, to the extent the requested information is not encompassed by Open Records Letter

No. 2012-13933, we have no choice but to order you to release the information 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, 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 "Sean Opperman". The signature is written in a cursive, slightly slanted style.

Sean Opperman
Assistant Attorney General
Open Records Division

SO/som

Ref: ID# 464452

Enc. Submitted documents

c: Requestor
(w/o enclosures)