



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 5, 2012

Mr. Miles J. LeBlanc  
Assistant General Counsel  
Houston Independent School District  
4400 West 18th Street  
Houston, Texas 77092-8501

OR2012-15950

Dear Mr. LeBlanc:

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# 467150.

The Houston Independent School District (the "district") received a request for three categories of information related to the contracts awarded under request for proposal number 10-01-05. You state some of the requested information is being released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note you have submitted spreadsheets that contain information beyond the scope of the categories of information requested. This information is not responsive to the present request. The district need not release non-responsive information in response to the request, and this ruling will not address that information.

---

<sup>1</sup>We 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 those submitted to this office.

Next, we must address the district's obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. Section 552.301(e-1) of the Government Code requires a governmental body that submits written comments to the attorney general under section 552.301(e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body within fifteen business-days of receiving the request for information. Gov't Code § 552.301(e-1). Section 552.301(e-1) authorizes a governmental body to redact information from those written comments that discloses or contains the substance of the information requested. *Id.* In this instance, the district sent the requestor a copy of its briefs to this office requesting a decision and stating the exceptions that apply, but the briefs do not contain any written comments stating the reasons why the asserted exceptions apply. According to the district's August 7, 2012 brief to our office, these written comments, disclosed to our office as Exhibit 2, were excepted from the information sent to the requestor. We note the excluded portions of the district's comments contain information well beyond the substance of the submitted information. Therefore, we conclude the district failed to comply with the procedural requirements of section 552.301(e-1) 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 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 (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). You raise sections 552.103, 552.107, and 552.111 as exceptions to disclosure. However, these sections are discretionary exceptions that protect a governmental body's interests and may be waived. *See 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. 676 at 10-11 (2002) (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (governmental body may waive section 552.111). As such, sections 552.103, 552.107, and 552.111 do not constitute compelling reasons to withhold information for purposes of section 552.302, and the district may not withhold the responsive information under those exceptions. As you raise no other exceptions to disclosure, the responsive 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](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, appearing to read "Michelle R. Garza", with a stylized flourish at the end.

Michelle R. Garza  
Assistant Attorney General  
Open Records Division

MRG/som

Ref: ID# 467150

Enc. Submitted documents

c: Requestor  
(w/o enclosures)