



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2012

Mr. Bruce A. Koehler
Counsel for the El Paso Independent School District
Mounce, Green, Myers, Safi, Paxson & Galatzan
100 North Stanton, Suite 1000
El Paso, Texas 79901-1463

OR2012-16361

Dear Mr. Koehler:

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# 469056 (PIR No. 2012-274).

The El Paso Independent School District (the "district"), which you represent, received a request for documents kept by a named individual and used as documentation for the removal of the requestor from his post with the district. You claim the submitted information is excepted from disclosure under sections 552.107 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov't Code § 552.301(b). In this instance, you state the district received the request for information on August 2, 2012. Thus, the district's ten-business-day-deadline was August 16, 2012. The district's request for a decision, however, bears a post office mark reflecting it was mailed on August 20, 2012. *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 the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption 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). Although you assert Exhibits B and C are excepted under section 552.107 of the Government Code, this section is discretionary in nature. Section 552.107 serves only to protect a governmental body's interests, and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* 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 in general), 663 at 5 (1999) (waiver of discretionary exceptions). Thus, no portion of Exhibit B or Exhibit C may be withheld under section 552.107. As you raise no other exceptions against disclosure of Exhibits B and C, they must be released. However, because you raise section 552.135 of the Government Code for Exhibit D and this section can provide a compelling reason to withhold information, we will consider the applicability of this exception to Exhibit D.

Section 552.135 of the Government Code provides, in part, the following:

- (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].
- (c) Subsection (b) does not apply:
 - (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or
 - (2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or
 - (3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. *See id.* § 552.301(e)(1)(A). You state Exhibit D identifies an employee of the district who reported a potential violation criminal law. You do not indicate this individual consented to public disclosure of her identity. Based on your representations and our review, we have marked information the district must withhold under section 552.135 of the Government Code. However, we find you have failed to demonstrate how the remaining information at issue reveals the identity of this individual and, therefore, we find you have not established any of the remaining information reveals the identity of an informer for the purposes of section 552.135. Therefore, the district may not withhold any of the remaining information in Exhibit D under section 552.135.

In summary, the district must withhold the information we have marked in Exhibit D under section 552.135 of the Government Code. The remaining 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 469056

Enc. Submitted documents

c: Requestor
(w/o enclosures)