



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 25, 2013

Ms. Cynthia Rincon
General Counsel
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2013-03165

Dear Ms. Rincon:

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# 479564 (Fort Bend ORR 2012-13-230).

The Fort Bend Independent School District (the "district") received a request for all documents, memos, and statements relating to the termination of a former district employee. You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We must address the district's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. 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. Gov't Code § 552.301(b). In this instance, you state the district received the request for information on November 20, 2010. You further state, and provide documentation showing, you informed the requestor of the need for an additional ten days to respond to the request. However, we note the deadlines prescribed by section 552.301 are fixed by statute and cannot be altered by agreement. *See* Attorney General Opinion JM-672 (1987); Open Records Decision Nos. 541 at 3 (1990) (obligations of a governmental body under predecessor to Act cannot be compromised simply by decision to enter into contract), 514 at 1-2 (1988). You inform

us the district was closed from November 21, 2012 to November 23, 2012. We note this office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Thus, the district's ten-business-day deadline to request a ruling was December 7, 2012. However, the envelope containing your request for a ruling is postmarked December 12, 2012. See Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail). Therefore, we find the district failed to comply with the requirements of section 552.301.

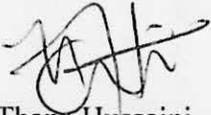
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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 and 552.107 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). As such, sections 552.103 and 552.107 do not constitute compelling reasons to withhold information for purposes of section 552.302, and the district may not withhold the responsive information under sections 552.103 and 552.107. As no other exceptions to disclosure have been raised, the requested information must be released.¹

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.

¹We note the requestor has a special right of access to some of the information being released in this instance. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.

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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 479564

Enc. Submitted documents

c: Requestor
(w/o enclosures)