



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 27, 2013

Ms. Debra L. Goetz  
Atlas, Hall & Rodriguez, L.L.P.  
P.O. Box 3725  
McAllen, Texas 78502-3725

OR2013-04961

Dear Ms. Goetz:

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# 482365.

The McAllen Independent School District (the "district"), which you represent, received a request for information. You claim the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. You also indicate the requested information may implicate the interests of third parties. Although you do not identify any of the third parties, you state the district will notify the third parties of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exceptions you claim.

We must address the district'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. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov't Code § 552.301(a), (b). 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) written comments stating the reasons why the claimed 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. *See id.* § 552.301(e)(1). You do not inform us when the district received the present request for information. Thus, we are unable to determine whether the district complied with section 552.301(b) of the Government Code. In addition, you have not submitted to this office arguments stating why any claimed exceptions apply to the information at issue, a copy of the written request for information, a signed statement or sufficient evidence showing the date the district received the written request, or a copy or representative sample of the information requested. Accordingly, we conclude 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 submit to this office the information required in section 552.301(e) results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *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 governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by another source of law or affects third-party interests. *See* ORD 630. Because the district failed to comply with the requirements of the Act, the district has waived its claim under section 552.104 of the Government Code. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Furthermore, although the district also raises mandatory exceptions to disclosure, because you have not submitted any of the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. You also claim third-party interests are at stake, which can provide a compelling reason to withhold information. However, we have not received comments from any third party explaining how release of the requested information would affect its proprietary interests. *See* Gov't Code § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3. Thus, we have no choice but to order the requested information be released pursuant to section 552.302 of the Government Code. If the district believes the information is confidential and may not lawfully be released, the district 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](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 cursive script, reading "Jennifer Burnett", with a long horizontal flourish extending to the right.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/tch

Ref: ID# 482365

c: Requestor