



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 15, 2014

Ms. Pam Kaminsky  
Counsel for the New Caney Independent School District  
Walsh, Anderson, Gallegos, Green, and Trevino, P.C.  
10375 Richmond Avenue, #750  
Houston, Texas 77042

OR2014-16253

Dear Ms. Kaminsky:

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# 536262.

The New Caney Independent School District (the "district"), which you represent, received a request for information pertaining to specified employees of the district over a specified time period. You claim the responsive information is excepted from disclosure under sections 552.103 and 552.107 of the Government Code. We have considered the exceptions you claim.

Initially, we must address the district's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) 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). In this instance, you state the district received the request for information on June 18, 2014. As of the date of this letter, you have not submitted for our review a copy or representative sample of the information requested. Consequently, we find the district failed to comply with section 552.301 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 Gov't Code § 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). Although you raise sections 552.103 and 552.107 of the Government Code, these are discretionary exceptions to disclosure 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 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decisions Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (waiver of discretionary exceptions), 630 at 4 (1994) (governmental body may waive attorney-client privilege). Thus, the district's claims under sections 552.103 and 552.107 are not compelling reasons to overcome the presumption of openness. Therefore, the district may not withhold any of the requested information under section 552.103 or section 552.107. As such, we have no choice but to order the district to release the requested information to the requestor pursuant to 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/ds

Ref: ID# 536262

Enc. Submitted documents

c: Requestor  
(w/o enclosures)