



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

February 5, 2016

Mr. Robert J. Salinas  
Counsel for Donna Independent School District  
Robert J. Salinas & Associates  
2101 Wood Avenue  
Donna, Texas 78537

OR2016-02876

Dear Mr. Salinas:

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# 597456.

The Donna Independent School District (the "district"), which you represent, received a request for information pertaining to district employees meeting specified retirement eligibility requirements. You assert the requested information is not subject to the Act. Alternatively, you claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments.

Section 552.0038(c) of the Government Code provides that a governmental entity that maintains records of a participant in a retirement system's retirement program in cooperation with or on behalf of a retirement system is not required to accept or comply with a request for such information or to seek an opinion from the attorney general because the records are exempt from the provisions of the Act. *See* Gov't Code § 552.0038(c). Therefore, to the extent the requested information consists of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, the information is not subject to the Act, and the district is not required to release it in response to the request. However, to the extent the requested information does not consist of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, we will consider your remaining argument against disclosure.

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. *See id.* § 552.301(e). The district received the request for information on November 10, 2015. However, as of the date of this letter, you have not submitted for our review written comments stating the reasons why the stated exceptions apply or 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 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 raise a mandatory exception to disclosure, because you have not submitted the requested information for our review, we have no basis for finding any of the information is excepted from disclosure or confidential by law. Thus, to the extent the requested information consists of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, the district is not required to release it in response to the request. *See* Gov't Code § 552.0038(c). However, to the extent the requested information does not consist of records of a participant in a retirement system's retirement program maintained in cooperation with or on behalf of a retirement system, we have no choice but to order the district to release it pursuant to section 552.302. If, in this instance, 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](#), 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,

A handwritten signature in black ink, appearing to read "B. Berger", with a long horizontal flourish extending to the right.

Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 597456

c: Requestor