



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 16, 2015

Mr. Robert A. Schulman
Counsel for the San Antonio School for Inquiry and Creativity
Schulman, Lopez, Hoffer & Adelstein, LLP
517 Soledad Street
San Antonio, Texas 78205-1508

OR2015-24079

Dear Mr. Schulman:

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# 587150.

The San Antonio School for Inquiry and Creativity ("SASIC") received a request for the names, position titles, and certification status of all faculty, staff, and administrators at SASIC. You claim the requested information is excepted from disclosure under sections 552.101 through 552.154 of the Government Code and privileged under rule 192.5 of the Texas Rules of Civil Procedure and rule 503 of the Texas Rules of Evidence.¹ Additionally, you state release of the requested information may implicate the proprietary interests of third parties. We have considered the raised arguments.

Initially, we must address SASIC's 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 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. Gov't Code § 552.301(e). You state SASIC received the request for information on August 24, 2015. As of the date of this letter, you have not submitted for our review written comments stating the reasons why the stated

¹Although you raise sections 552.022, 552.024, 552.026, and 552.027 of the Government Code, these sections are not exceptions to disclosure. See Gov't Code §§ 552.022, .024, .026, .027.

exceptions apply or a copy or representative sample of the information requested. Accordingly, we find SASIC 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). Because SASIC failed to comply with the procedural requirements of the Act, SASIC has waived all of its discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although SASIC also raises mandatory exceptions to disclosure and although third party interests are implicated in the instant request, because you have not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure or confidential by law. Thus, we have no choice but to order the requested information released pursuant to section 552.302. 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, 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/som

Ref: ID# 587150

c: Requestor