



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 13, 2016

Mr. Miguel Salinas
Staff Attorney
Brownsville Independent School District
1900 Price Road
Brownsville, Texas 78521

OR2016-15815

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# 618637 (Ref No. 08481).

The Brownsville Independent School District (the "district") received a request for specified records pertaining to named district employees and all records pertaining to specified complaints. You state the district does not possess information responsive to a portion of this request.¹ You state you have released some information. You claim the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim.

Initially, some of the requested information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-11865 (2016). In response to Open Records Letter No. 2016-11865, the district has filed a lawsuit against our office. *See Brownsville Indep. Sch. Dist. v. Ken Paxton, Attorney Gen. of Tex.*, No. D-1-GN-16-002714 (201st Dist. Ct., Travis County, Tex.). Accordingly, with regard to the information at issue in this lawsuit, we will allow the trial court to resolve the issue of

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

whether the information that is the subject of the pending litigation must be released to the public. However, to the extent the information at issue is not identical to the information at issue in the pending litigation, we will address your arguments against disclosure.

Next, we must address 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(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). The district received the request for information on April 19, 2016. However, as of the date of this letter, the district has not submitted a copy or representative sample of the requested information. Therefore, the district failed to comply with the procedural requirements mandated by section 552.301(e).

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); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). You raise sections 552.101 and 552.102 of the Government Code, which can provide compelling reasons for non-disclosure. However, 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 remaining 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.

In summary, we will allow the trial court to resolve the issue of whether the information that is the subject of Cause No. D-1-GN-16-002714 must be released to the public. Otherwise, the requested information must be released.

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 "Matthew Taylor", with a long horizontal flourish extending to the right.

Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 618637

c: Requestor