



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 30, 2016

Ms. Jeanne C. Collins
General Counsel
Office of Legal and Legislative Affairs
El Paso Independent School District
6500-K Boeing Drive
El Paso, Texas 79925-1008

OR2016-19585

Dear Ms. Collins:

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# 624684 (EPSID ORR# 2016.224).

The El Paso Independent School District (the "district") received a request for specified documents pertaining to the requestor's client. We understand you have released some information. You claim the remaining requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.108, 552.114, 552.116, 552.117, 552.135, and 552.142 of the Government Code.¹ We have considered the exceptions you claim.

We must address the district's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. 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)(1)(A)-(D). You inform us the district received the request for information on June 24, 2016. However, as of the date of this letter, you have not submitted to this office written comments stating the reasons why the claimed exceptions

¹Although you raise section 552.026 of the Government Code, this section is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with FERPA. See Gov't Code § 552.026.

apply or a copy of the specific information requested or representative samples. Accordingly, we conclude the district failed to comply with the requirements of 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. 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 the information is made confidential by another source of law or affects third party interests. *See* ORD 630. Because the district has failed to comply with the procedural requirements of the Act, the district has waived all of its claimed discretionary exceptions to disclosure. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Although the district also raises mandatory exceptions to disclosure, 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,



Matthew Taylor
Assistant Attorney General
Open Records Division

MHT/dls

Ref: ID# 624684

c: Requestor