



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 4, 2017

Mr. John M. Muñiz
Counsel for the Harlandale Independent School District
Walsh, Gallegos, Treviño, Russo & Kyle, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2017-00217

Dear Mr. Muñiz:

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# 640577.

The Harlandale Independent School District (the "district"), which you represent, received a request for e-mail communications between specified individuals that contain specified terms. You claim the submitted information is excepted from disclosure under section 552.107 of the Government Code.¹ You state the district has redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).² We have considered the exception you claim and reviewed the submitted information.

¹Although the district also raises section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 677 (2002), 676 (2002).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

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(b), within ten business days after receiving a written request the governmental body must request a ruling from this office and state the exceptions to disclosure that apply. Gov't Code § 552.301(b). Further, pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general 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 states it received the request for information on September 23, 2016. Accordingly, the district's ten-business-day deadline under section 552.301(b) was October 7, 2016. The district states it sought clarification of the request on October 7, 2016 and received clarification from the requestor on the same day. Accordingly, the district's ten-business-day deadline was reset to October 21, 2016, and the district's fifteen-business-day deadline was reset to October 28, 2016. The district states it sought additional clarification on October 28, 2016. Thus, we understand the district to claim the deadlines should be reset because the district asked for a second clarification from the requestor. However, we note the district did not request the second clarification of the request until after the ten-business-day deadline for the request had passed. As such, the statutory deadlines for requesting an opinion from this office and submitting the required documentation for the request were not reset by the second request for clarification and must be measured from the date the district received the first clarification regarding the request. *See generally City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten-business-day deadline, city timely submitted request for opinion within ten business days after receiving clarification). Thus, as stated above, the district's ten and fifteen-business-day deadlines were October 21, 2016 and October 28, 2016, respectively. However, the envelope in which you provided the information required by section 552.301(e) was meter-marked November 11, 2016. *See* Gov't Code § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Therefore, we find the district failed to comply with the procedural requirements mandated by 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 there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing that the information is made confidential by

another source of law or affects third-party interests. *See* ORD 630. Although you raise section 552.107 of the Government Code, this exception is discretionary in nature. It serves only to protect a governmental body's interests and may be waived; as such, it does not constitute a compelling reason to withhold information for purposes of section 552.302. *See* Open Records Decision Nos. 676 at 12 (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). In failing to comply with section 552.301(e), the district has waived its claim under section 552.107 of the Government Code. Therefore, none of the submitted information may be withheld under section 552.107 of the Government Code. As no further exceptions to disclosure have been raised, the submitted 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,



Thana Hussaini
Assistant Attorney General
Open Records Division

TH/som

Ref: ID# 640577

Enc. Submitted documents

c: Requestor
(w/o enclosures)