



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

This ruling has been modified by court action.
The ruling and judgment can be viewed in PDF
format below.



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 25, 2017

The ruling you have requested has been amended as a result of litigation and has been attached to this document.

Mr. Robert A. Schulman
Counsel for Harmony Public Schools
Schulman, Lopez, Hoffer & Adelstein, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2017-16668

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# 668447.

Harmony Public Schools ("Harmony"), which you represent, received a request for fourteen categories of information pertaining to employees, complaints, investigations, and employment handbooks for a specified period of time. Harmony states it has released some of the requested information, but claims the remaining requested information is excepted from disclosure under sections 552.101 through 552.154 of the Government Code. We have considered the claimed exceptions.

Initially, we note Harmony received the original request for information on April 6, 2017. Harmony then asked the requestor to clarify the request, and it received the requestor's clarification on May 22, 2017. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified). Harmony explains it sent the requestor a cost estimate and request for a deposit for payment of these charges for providing the requested information in response to the clarification. *See* Gov't Code §§ 552.2615, .263(a). Harmony asserts the request for information was withdrawn by operation of law because the requestor did not timely respond to the cost estimate but, instead, filed a

complaint with this office alleging he had been overcharged. *See id.* § 552.2615(b)(3). However, we note this office has not received a complaint from the requestor regarding the charges associated with the cost estimate and request for deposit. In addition, upon review of a copy of the cost estimate, we find it does not comply with the requirements of section 552.2615(a) of the Government Code.¹ *See id.* § 552.2615(a); *see also id.* § 552.263(a)(1). Accordingly, we conclude the request for information was not withdrawn by operation of law.

Next, we must address the district's procedural obligations under section 552.301 of the Government Code, which 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. *Id.* § 552.301(e). However, as of the date of this letter, Harmony has not submitted written comments regarding the stated exceptions or a copy or representative sample of the requested information. Therefore, Harmony failed to comply with the procedural requirements mandated by section 552.301(e).

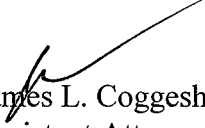
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason 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). Although Harmony raises exceptions to disclosure, because it has not submitted the requested information for our review, we have no basis for finding any of the information excepted from disclosure. Thus, we have no choice but to order the requested information be released pursuant to section 552.302. If Harmony believes the information may not lawfully be released, it 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.

¹We note Harmony provided to this office a copy of the cost estimate in response to this office's request for additional information under section 552.303 of the Government Code. Gov't Code § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render decision).

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 668447

c: Requestor

NOV 02 2017

At 8:49 a.m.
Velva L. Price, District Clerk

Cause No. D-1-GN-17-003836

HARMONY PUBLIC SCHOOLS,	§	IN THE DISTRICT COURT OF
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	TRAVIS COUNTY, TEXAS
KEN PAXTON, IN HIS OFFICIAL	§	
CAPACITY AS TEXAS ATTORNEY	§	
GENERAL,	§	
<i>Defendant.</i>	§	353rd JUDICIAL DISTRICT

AGREED ORDER OF DISMISSAL

This cause is an action under the Public Information Act (PIA), Texas Government Code Chapter 552. Plaintiff Harmony Public Schools (Harmony) and Defendant Ken Paxton, Attorney General of Texas (Attorney General), agree that this matter should be dismissed pursuant to PIA section 552.327 on the grounds that the requestor has voluntarily withdrawn the request for information in writing. See Tex. Gov't Code § 552.327. A court may dismiss a PIA suit under section 552.327 when all parties agree to dismissal and the Attorney General determines and represents to the Court that the requestor has voluntarily withdrawn the request for information in writing or has abandoned the request. *Id.* The Attorney General represents to the Court that the requestor, Jorriod Moore, has abandoned the request for information.

Further, Letter Ruling OR2017-16668 will not be considered a "previous determination" by the Office of the Attorney General under Tex. Gov't Code § 552.301(a), (f); and, if the precise information is requested again, Harmony may ask for a decision from the Attorney General under Tex. Gov't Code



§ 552.301(g). Accordingly, Harmony is not required to disclose the requested information subject to release in Letter Ruling OR2017-16668. The parties request that the Court enter this Agreed Order of Dismissal.

The Court is of the opinion that entry of an agreed dismissal order is appropriate.

It is THEREFORE, ORDERED, ADJUDGED and DECREED that this cause is DISMISSED in all respects;

All court costs and attorney fees are taxed to the party incurring same;

All other requested relief not expressly granted herein is denied;

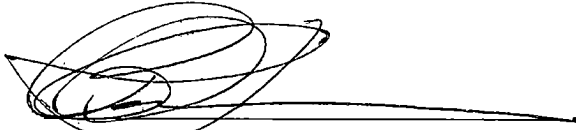
This order disposes of all claims between the parties and is final.

Signed this 2nd day of November, 2017.



JUDGE PRESIDING
AMY CLARK MEACHUM

AGREED:



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