



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 13, 2020

Mr. Tony Torres
Counsel for the Donna Independent School District
Flores & Torres, L.L.P.
118 East Cano Street
Edinburg, Texas 78539

OR2020-04646

Dear Mr. Torres:

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# 812013.

The Donna Independent School District (the "district"), which you represent, received multiple requests from the same requestor for several specified agreements. You state the district does not have information responsive to some of the requests.¹ You claim the submitted information is excepted from disclosure under section 552.104 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. Gov't

¹ The 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).

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Code § 552.301(b). 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). The district received the requests for information on November 4, 2019. You state, and provide documentation showing, the district sent the requestor a notice under section 552.221(d) of the Government Code stating it needed additional time to fulfill the requests. Section 552.221(d) provides when a governmental body must make information available to a requestor if the governmental body certifies it cannot do so within ten business days of receiving the request. *See id.* § 552.221(d). However, we note section 552.221(d) does not affect the district's deadlines under section 552.301 of the Government Code. Additionally, you inform us, and provide documentation showing, the district sought clarification from the requestor on December 9, 2019, and received clarification on December 10, 2019. We understand you to claim the district's deadlines under section 552.301 should be calculated from the date it received the clarification from the requestor. However, we note the district did not send its clarification of the requests until after the ten-business-day deadline from the requests had passed. As such, the statutory deadlines for requesting an opinion from this office and submitting the required documentation for the requests were not reset by the request for clarification and must be measured from the date the district received the requests for information, November 4, 2019. *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). This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Thus, the district's ten-business-day deadline under section 552.301(b) was November 18, 2019, and the fifteen-business-day deadline under section 552.301(e) was November 25, 2019. However, the envelope in which you provided the information required by section 552.301(b) was postmarked December 2, 2019, and the information required by section 552.301(e) was postmarked December 28, 2019. *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). Consequently, we conclude the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

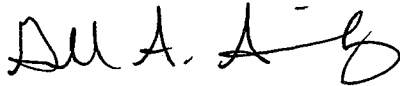
Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless there is a compelling reason to withhold the information 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). You claim section 552.104 for the submitted information. However, we find you have failed to establish a compelling reason to address your claimed exception, and the district may not withhold the submitted information under section 552.104 of the Government Code.

Accordingly, we have no choice but to order the requested information released pursuant to section 552.302 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Gerald Arismendez
Assistant Attorney General
Open Records Division

GAA/be

Ref: ID# 812013

Enc. Submitted documents

c: Requestor
(w/o enclosures)