OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

June 19, 2003

Ms. Dianna D. Wojcik
Bracewell & Patterson
500 North Akard Street, Suite 4000
Dallas, Texas 75201-3387

OR2003-4224

Dear Ms. Wojcik:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183091.

The Grand Prairie Independent School District (the "District"), which you represent, received a request for copies of "Barbosa's Bulletin" and "Barbosa's Blast" for a specified time interval. You indicate that the District does not possess any responsive copies of "Barbosa's Blast." Chapter 552 of the Government Code does not require the District to release information that did not exist when it received this request or to create responsive information.[1] You inform us that the District will release most of the remaining requested information. However, you claim some of the submitted information is excepted from disclosure under sections 552.103 and 552.111 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

Initially, we address the District's obligations under section 552.301 of the Government Code. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(e) provides in part:

> (e) A governmental body that requests an attorney general decision . . . must . . . not later than the 15th business day after the date of receiving the written request [for information]:
>
> (1) submit to the attorney general:
>
> . . .

[1] *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dism'd); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

(B) a copy of the written request for information[.]

Gov't Code § 552.301(e)(1)(B). You state that the District received the written request for information on March 31, 2003. Thus, our office should have received a copy of the written request for information by April 21, 2003. However, we did not receive this document until June 17, 2003 because, as you acknowledge, the District "inadvertently left out [a copy of the request from] the packet to the Attorney General's Office." Consequently, we conclude the District failed to comply with the requirements of subsection 552.301(e) of the Government Code.

According to section 552.302 of the Government Code, a governmental body's failure to comply with 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* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or release of the information implicates third party interests. Open Records Decision No. 150 at 2 (1977). In your letter seeking an opinion from this office, you assert sections 552.103 and 552.111 of the Government Code, discretionary exceptions under the Act. A governmental body may waive sections 552.103 and 552.111; therefore, these exceptions do not qualify as compelling reasons to withhold information from the public. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 663 (1999) (governmental body may waive Gov't Code § 552.103), 551 (1990) (statutory predecessor to Gov't Code § 552.103 serves only to protect a governmental body's position in litigation and does not itself make information confidential), 473 (1987) (governmental body may waive Gov't Code § 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Thus, the District may not withhold the requested information under section 552.103 or 552.111 of the Government Code. As you claim no other exception to disclosure, the District must release the submitted information, in its entirety, to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/JWM/sdk

Ref: ID# 183091

Enc. Submitted documents

c: Ms. Jennifer Arend
c/o Ms. Dianna D. Wojcik
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(w/o enclosures)