



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 7, 2004

Ms. Marianna M. McGowan
Abernathy Roeder Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2004-0118

Dear Ms. McGowan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 193911.

The Northwest Independent School District (the "district"), which you represent, received a request for "a list of students in the Trophy Club area that could potentially be part of Carroll ISD boundaries," including a "breakdown by grade level." You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. You have not submitted any information that is deemed to be responsive to this request.¹ Instead, you inform this office that "the [d]istrict does not maintain the information as requested and will be required to manipulate the data should the Attorney General determine the information should be released." We have considered your arguments.

We initially note that the Public Information Act (the "Act"), chapter 552 of the Government Code, does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds that information on behalf of the governmental body that receives the request for it. *See* Gov't Code § 552.002(a);

¹We note that this office has concluded that: (1) an educational agency or institution may withhold information that is protected by the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and excepted from required public disclosure under sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those sections, and (2) a state-funded educational agency or institution may withhold information that is excepted from disclosure under section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that section. *See* Open Records Decision No. 634 at 6-8 (1995).

Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989). But a governmental body must make a good-faith effort to relate a request to any responsive information that may be within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

In this instance, however, you assert that the district "will be required to manipulate the data" if it is determined that the requested information must be released. A request for public information that requires a governmental body to program or manipulate existing data is not considered to be a request for the creation of new information. *See* Gov't Code § 552.231; *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681-82 (Tex. App.—Eastland 2000, pet. denied) (plaintiffs' request required manipulation of existing data rather than creation of new information); Open Records Decision No. 661 at 6-7 (1999). Thus, if information that is otherwise available to a governmental body can be programmed or manipulated for the purpose of responding to a request for information, then the governmental body has access to information that is responsive to that request.² Section 552.231 prescribes procedures that must be followed if, in responding to a request for information, a governmental body would be required to program or manipulate data. *See* Gov't Code § 552.231(a) (written statement described by Gov't Code § 552.231(b) shall be provided to requestor if governmental body determines (1) that responding to request for information will require programming or manipulation of data and (2) that compliance with request is not feasible or will result in substantial interference with ongoing operations or that information could be made available in requested form only at costs that cover programming and manipulation).

You do not indicate that the district has provided the requestor with the written statement prescribed by section 552.231. A governmental body that fails to comply with the requirements of section 552.231 is not otherwise excused from complying with its obligation under the Act to either release the requested information or ask this office to determine whether the information is excepted from public disclosure. *See* Gov't Code §§ 552.006, .301, .302; *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d at 682 (governmental body that had not provided written statement required by Gov't Code § 552.231 not released by that section from obligation to provide requested information); *see also* Gov't Code §§ 552.001(b), .021, .221; Open Records Decision No. 664 (2000).

A governmental body that seeks to withhold requested information must comply with section 552.301 of the Act in doing so. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a

² We note that the Act defines "manipulation" as "the process of modifying, reordering, or decoding of information with human intervention." Gov't Code § 552.003(2). "Programming" is defined as "the process of producing a sequence of coded instructions that can be executed by a computer." *Id.* § 552.003(4).

signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. If a governmental body does not comply with section 552.301 in requesting an attorney general decision, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

The district seeks to withhold the requested information under section 552.103. However, you have not submitted the information at issue or a representative sample of that information in requesting this decision. The requested information is therefore presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold the information from the public. The statutory presumption that information is public can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.103 is a discretionary exception to public disclosure that protects the governmental body's interests and may be waived. *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. 542 at 4 (1990) (statutory predecessor may be waived). A claim under section 552.103 does not provide a compelling reason for non-disclosure under section 552.302. In failing to comply with section 552.301, the district has waived its claim under section 552.103. *See* Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, in accordance with section 552.302, the district must release the requested information.

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,

A handwritten signature in black ink, appearing to read 'James W. Morris, III', written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 193911

c: Ms. Sharon Eaves
Carroll Independent School District
3051 Dove Road
Grapevine, Texas 76051
(w/o enclosures)