OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 13, 2003

Mr. Jacques Trevino
Gorena & Trevino
420 West University Drive
Edinburg, Texas 78539

OR2003-0255

Dear Mr. Trevino:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174918.

The Edinburg Consolidated Independent School District (the "district"), which you represent, received a request for information relating to certain employees and applicants for employment. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.

We first note that you have not complied with section 552.301 of the Government Code in requesting this decision. 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:
>
> . . .
>
> (D) a copy of the specific information requested, or . . . representative samples of the information if a voluminous amount of information was requested[.]

Gov't Code § 552.301(e)(1)(D). Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . 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."

You have not submitted the requested information, or representative samples of the information, that the district claims is excepted from disclosure. Thus, the district has not complied with section 552.301 in requesting this decision. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or where third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, however, you have not submitted the requested information, and thus we have no basis for finding that it is confidential. Therefore, we have no choice but to order the information released per section 552.302. If you believe that the information is confidential and may not lawfully be released, you must challenge the ruling in court as outlined below.

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 Department of Public 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,

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

JWM/sdk

Ref: ID# 174918

c: Ms. Melba Flores
c/o Jacques Trevino
Gorena & Trevino
420 West University Drive
Edinburg, Texas 78539
(w/o enclosures)