



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 30, 2003

Ms. Judy Brown
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2003-3670

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181930.

The Llano Independent School District (the "district"), which you represent, received multiple requests for information relating to the pending indictment against the district's superintendent. Specifically, the first requestor seeks copies of any open records requests submitted by two individuals, as well as any correspondence between the district and those individuals. The second requestor seeks copies of all information relating to construction change orders for all construction projects dating back to January 1999. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We note, however, that the first requestor subsequently withdrew his requests for information. Thus, this ruling only addresses those records that are responsive to the second request for information.¹

Section 552.108(a)(1) of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has concluded, however, that where an incident involving allegedly criminal conduct is still under active investigation or

¹The district submitted a representative sample of the construction information in its exhibit C. We assume that these sample records are 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.

prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under Gov't Code § 552.108).

You indicate that the requested records pertain to criminal investigations being conducted by the Office of the Attorney General's Prosecutor Assistance/Special Investigations Division and the District Attorney's Office for the Thirty-third Judicial District. This office has also received letters from these two entities asking that the requested records be withheld from disclosure under section 552.108 so as not to interfere with their ongoing criminal investigations. Based on these representations and our review of the submitted information, we agree that the release of these records would interfere with the detection, investigation, or prosecution of crime. Accordingly, the district may withhold the responsive records pursuant to section 552.108(a)(1) of the Government Code. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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,

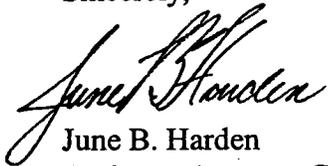
at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 181930

Enc: Submitted documents

c: Mr. R. G. Harrell
548 Oak Grove Lane
Coppell, Texas 75019
(w/o enclosures)

Mr. William F. Jennings
P.O. Box 5735
Valley Spring, Texas 76885
(w/o enclosures)

Ms. Angela Goodwin
Assistant Attorney General
Prosecutor Assistance Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(w/o enclosures)

Mr. Sam Oatman
District Attorney
33rd Judicial District
P.O. Box 725
Llano, Texas 78643
(w/o enclosures)