



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 26, 2003

Ms. Lisa B. Silvia
Paralegal
Fort Worth Independent School District
100 North University Drive, Suite NW 130
Fort Worth, Texas 76107

OR2003-5992

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 186566.

The Fort Worth Independent School District (the "district") received a request for "[a]ny and all subpoenas [sic] from the U.S. Attorney Office and/or the Federal Bureau of Investigation [the "FBI"] and/or any federal grand jury from 1999 to the present that pertains to school employee records and/or timecards or time sheets," as well as "the dispatch log and/or any documents pertaining to breakins [sic] at district schools from Aug. 1, 2002 to Sept. 1, 2002," printouts from district computers showing amounts paid to four named individuals from September 1, 1998 to March 31, 2003, and photographs taken by the district of seven named individuals. The submitted documents indicate that no information exists that is responsive to the request for information regarding break-ins at district schools. We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). Furthermore, the submitted documents indicate that the requested photographs and information regarding amounts paid to the named individuals have been provided to the requestor. You claim that the submitted subpoena information is excepted from disclosure under section 552.101 of the Government

Code.¹ We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information made confidential by other statutes. You contend that the subpoena at issue is confidential under article 20.02 of the Code of Criminal Procedure, which provides that “[t]he proceedings of the grand jury shall be secret.” This office has determined that information that reveals the proceedings of the grand jury is confidential under article 20.02(a) of the Code of Criminal Procedure and excepted from disclosure under section 552.101 of the Government Code. However, the submitted subpoena documents do not reveal the proceedings of the grand jury and are therefore not confidential pursuant to article 20.02. Thus, we determine that the submitted subpoena documents may not be withheld under section 552.101 in conjunction with article 20.02.

Next, you also contend that the requested subpoena information is excepted under section 552.101 in conjunction with Rule 6 of the Federal Rules of Criminal Procedure. Rule 6(e) provides in pertinent part:

(2) General Rule of Secrecy. A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, an attorney for the government, or any person to whom disclosure is made under paragraph (3)(A)(ii) of this subdivision shall not disclose matters occurring before the grand jury, except as otherwise provided for in these rules. No obligation of secrecy may be imposed on any person except in accordance with this rule. A knowing violation of Rule 6 may be punished as a contempt of court.

Rule 6(e)(2), in its prescription of general secrecy, refers to the previous subsection, which provides that “[a]ll proceedings, except when the grand jury is deliberating or voting, shall be recorded stenographically or by an electronic recording device.” Fed. R. Crim. P. 6(e)(1). In addition, Rule 6(e)(3)(A)(ii) provides that disclosures otherwise prohibited by the general rule of secrecy may be made to “such government personnel (including personnel of a state or subdivision of a state) as are deemed necessary by an attorney for the government to assist an attorney for the government in the performance of such attorney’s duty to enforce federal criminal law.” *See id.* 6(e)(3)(A)(ii).

¹Although you raise section 552.108 of the Government Code in your request for a decision from this office, you make no arguments explaining why this exception should apply to the information at issue. Consequently, we find that the district has waived its claim under section 552.108 and we accordingly do not address the applicability of section 552.108 to the requested information. *See Gov’t Code §§ 552.301(e)(1)(A)* (governmental body seeking to withhold information pursuant to an exception under Act must provide written comments stating reasons why stated exceptions apply that would allow information to be withheld), .302.

The present request pertains to a subpoena received by the district in connection with an FBI investigation involving district employee records. You have not demonstrated that any employee of the district received the subpoena documents at issue as a result of being among the persons subject to the secrecy rule. *See id.* 6(e)(2), (3). We therefore determine that the district obtained possession of the subpoena documents at issue because the district was served with the subpoena, and not by operation of, or statutory exception to, the secrecy rule. *See id.* Moreover, section 6(e)(2) states that no obligation of secrecy may be imposed on any person except in accordance with this rule. *See id.* 6(e)(2). Accordingly, we determine that Rule 6 of the Federal Rules of Criminal Procedure does not make the subpoena documents at issue confidential for purposes of section 552.101 of the Government Code. We therefore conclude that the district must release the submitted subpoena documents 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 186566

Enc: Submitted documents

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(w/o enclosures)