



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 11, 2003

Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703

OR2003-8937

Dear Ms. Janssen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 192459.

The Austin Independent School District (the "district") received a request for information relating to (1) investigations of a former district employee for the 2002-2003 school year and (2) investigations during the 2003-2004 school year regarding two other current or former district employees and a particular elementary school. You state that you have released some of the requested information. You claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and reviewed the information you submitted.

We note that you have not submitted any responsive information, nor do you state that you have released any such information, with regard to one of the named individuals. We also note that information relating to that individual is the subject of two prior rulings by this office. To the extent that responsive information relating to that individual is encompassed by Open Records Letter No. 2003-7045 (2003), and provided that there has been no change in the law, facts, or circumstances on which the prior ruling is based, you must withhold or release any such information in accordance with the prior ruling.<sup>1</sup> The second prior ruling, Open Records Letter No. 2003-7675 (2003), is the subject of a pending lawsuit, *Austin*

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<sup>1</sup>See Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under Gov't Code § 552.301(a) when (1) precisely same records or information previously were submitted under Gov't Code § 552.301(e)(1)(D); (2) same governmental body previously requested and received ruling; (3) prior ruling concluded that same records or information are or are not excepted from disclosure; and (4) law, facts, and circumstances on which prior ruling was based have not changed).

*Independent School District v. Abbott*, Cause No. GV304566, 200th District Court of Travis County, Texas. To the extent that Open Records Letter No. 2003-7675 (2003) encompasses any information that is responsive to the present request, we express no further opinion with regard to the public availability of any such information. We will allow the trial court to determine whether any such information must be released to the public. To the extent that you have not submitted any information that is responsive to the present request, but is not encompassed by either of the prior rulings, we assume that you have released any such information. If not, then you must do so at this time. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000). We note that 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.<sup>2</sup>

Next, we address your claim with regard to the submitted information under section 552.108 of the Government Code. Section 552.108(a)(1) excepts from required public disclosure “[i]nformation 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[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You assert that the release of the submitted information would compromise an ongoing investigation by the district's police department. You also have provided a letter to that effect from a representative of the police department. Based on your arguments, we find that section 552.108(a)(1) is applicable in this instance. 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); Open Records Decision No. 372 at 4 (1983) (statutory predecessor to Gov't Code § 552.108 may be invoked by any proper custodian of information relating to incident involving allegedly criminal conduct that is still under active investigation or prosecution).

We note that section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The district must release basic information, including a detailed description of the offense, even if this information does not literally appear on the front page of an offense or arrest report. See *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). The district may withhold the rest of the submitted information under section 552.108(a)(1).

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<sup>2</sup>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).

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).

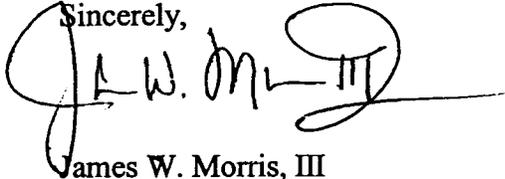
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and a long horizontal flourish at the end.

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

JEB/sdk

Ref: ID# 192459

Enc: Submitted documents

c: Ms. Jayne E. Weber  
Association of Texas Professional Educators  
305 East Huntland Drive, Suite 300  
Austin, Texas 78751  
(w/o enclosures)