ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 24, 2006

Ms. Elneita Hutchins-Taylor
General Counsel
Houston Independent School District
3830 Richmond Avenue
Houston, Texas 77027-5838

OR2006-00775

Dear Ms. Hutchins-Taylor:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 240795.

The Houston Independent School District (the "district") received two requests for information regarding a particular project. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[1] We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we note that you have not submitted information responsive to portions of the second request for our review. As you have not submitted this information for our review, we assume you have released it to the extent it existed on the date the district received the request. If you have not released any such records, you must release them to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible under circumstances).

[1]We assume that the "representative sample" of records submitted to this office is 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.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. Section 191.004 of the Natural Resources Code provides:

> (a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this chapter is not public information.
>
> (b) Information specifying the location or nature of an activity covered by a permit or an application for a permit under this chapter is not public information.
>
> (c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

Nat. Res. Code § 191.004(a)-(c). You state that the submitted information relates to the specific "location and nature of the survey" covered by a permit or application for a permit under Chapter 191, Natural Resources Code. Upon careful review of the submitted information, we find that it qualifies as information specifying the location or nature of an activity covered by a permit or an application for a permit for the purposes of section 191.004. Therefore, we conclude that the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 191.004(b) of the Natural Resources Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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 Forrest
Assistant Attorney General
Open Records Division

JF/er

Ref: ID# 240795

Enc. Submitted documents

c: Mr. Anthony Pizzitola
2527 Gramercy
Houston, Texas 77030-3107
(w/o enclosures)