



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 27, 2006

Mr. Dennis Eichelbaum
Schwartz & Eichelbaum, P.C.
Attorneys at Law
7400 Gaylord Pkwy, Ste. 200
Frisco, Texas 75034

OR2006-06789

Dear Mr. Eichelbaum:

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# 252645.

The Royse City Independent School District (the "district") received a request for all e-mail correspondence, internal documentation, and media recordings developed in the district's internal investigation of unaccounted fuel since August 1, 2005. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). By its terms, section 552.108 only applies to a law enforcement agency or prosecutor. The district is not a law enforcement agency. However, where an incident involving alleged criminal conduct is still under active investigation, section 552.108 may be invoked by the proper custodian of information relating to the incident. Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information

if it provides the attorney general with a demonstration that the information relates to the pending case and a representation from the law enforcement entity that it wishes to withhold the information. You assert and provided documentation that the Royse City Police Department (the "department") objects to the release of the information because it relates to the department's ongoing criminal investigation. We agree that release of the information at issue would interfere with the ongoing investigation. Therefore, the district may withhold the submitted information from disclosure under section 552.108(a)(1).¹

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

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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;



Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/krl

Ref: ID# 252645

Enc. Submitted documents

c: Ms. LaKisha Ladson
The Dallas Morning News
114 North San Jacinto Street
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(w/o enclosures)