



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 16, 2007

Mr. Spencer Reid
General Counsel
Office of the Lieutenant Governor
The Capitol
Austin, Texas 78711-2068

OR2007-06038

Dear Mr. Reid:

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# 279597.

The Office of the Lieutenant Governor (the "lieutenant governor") received a request "for copies of all e-mails, memos, correspondence and documents" written or received by its office from February 15, 2007 to the date of the request, relating to sexual and physical abuse allegations at the West Texas State School. You state that you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.106, 552.108, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a)(1) 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. Gov't Code § 552.108(a)(1). 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

¹Although you assert that the information at issue is excepted from disclosure under section 552.008 of the Government Code, we note that this section provides access to information, including confidential information, to individual members, agencies, or committees of the legislature to use for legislative purposes. Gov't Code § 552.008.

alleged criminal conduct is still under active investigation or 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). Where a non-law enforcement agency is in the custody of information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office 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.

The lieutenant governor, as custodian of the information at issue, states and provides documentation showing the Office of the Attorney General's Criminal Justice Divisions ("OAG CJD"), including the Criminal Investigations Division and Criminal Law Enforcement Division object to the release of the information at issue. The OAG CJD states that the information at issue relates to an ongoing criminal investigation. Based on this representation and upon review, we agree that release of the information at issue would interfere with the detection, investigation, or prosecution of crime. Therefore, the lieutenant governor may withhold the information at issue pursuant to section 552.108(a)(1). As our ruling is dispositive, we need not address your remaining claims for this information.

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).

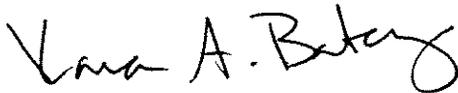
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



Kara A. Batey
Assistant Attorney General
Open Records Division

KAB/mcf

Ref: ID# 279579

Enc. Submitted documents

c: Ms. Emily Ramshaw
Austin Bureau
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(w/o enclosures)