



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

April 28, 2011

Mr. Hans P. Graff
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2011-05846

Dear Mr. Graff:

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# 415809.

The Houston Independent School District (the "district") received a request for all documents associated with the investigation of a named individual, including all supporting interview documents, notes, and e-mails.¹ We note you have released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments from the requestor. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released).

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. *Id.* § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere

¹We note that the district received clarification regarding this request. *See Gov't Code § 552.222* (b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district states release of the submitted information would interfere with the investigation and prosecution of this case. However, the requestor asserts the case at issue is not pending because she was told by the district media relations staff that the investigation has been completed by the district police department. Further, the requestor notes the district states the district attorney has declined to prosecute this matter. Whether the requested information relates to a pending criminal investigation is a question of fact. This office cannot resolve factual disputes in the opinion process. *See Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986)*. Where fact issues are not resolvable as a matter of law, we must rely on the facts alleged to us by the governmental body requesting our decision, or on those facts that are discernible from the documents submitted for our inspection. *See ORD 552 at 4*. Therefore, based on the district's representation, we determine release of the submitted information would interfere with the detection, investigation, or prosecution of this crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.²

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.

Mr. Hans P. Graff - Page 3

Ref: ID# 415809

Enc. Submitted documents

cc: Requestor
(w/o enclosures)