



October 29, 2002

Ms. Sandra C. Houston
General Counsel
Arlington Independent School District
1203 West Pioneer Parkway
Arlington, Texas 76013-6246

OR2002-6133

Dear Ms. Houston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 171382.

The Arlington Independent School District (the “district”) received a written request for the “results of the Arlington High School Colt Kicker audit and any record of reprimands made against [the] former Colt Kickers sponsor.” You have submitted to this office as responsive to the request the referenced audit.¹ You contend that the submitted information is excepted from required disclosure pursuant to section 552.108 of the Government Code.

We note at the outset that the release of the audit that you submitted to this office as being responsive to the request is specifically made subject to section 552.022 of the Government Code. Section 552.022(a) provides in pertinent part as follows:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, *audit*, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108. [Emphasis added.]

¹We assume for purposes of this ruling that the attachments to the audit contain all of the other information responsive to the request. However, to the extent that any other responsive information exists, that information must now be released. See Gov’t Code §§ 552.301, .302.

The submitted audit constitutes a “completed audit” made public under section 552.022(a)(1). Therefore, the district may withhold the audit only if it is made confidential under other law or is excepted from disclosure under section 552.108 of the Government Code. Because you contend that the audit may be withheld from the public pursuant to section 552.108, we will consider your arguments.

Section 552.108(a)(1) of the Government Code 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.” Section 552.108(a)(1) protects information pertaining to a pending criminal investigation or prosecution because the release of such information presumptively would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publishing 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).

You state that the district intends to submit the requested audit to the Tarrant County District Attorney for the purpose of determining whether criminal charges should be filed in connection with the complaints concerning the former sponsor. Based on your representations, we conclude that the district may withhold the requested audit in its entirety pursuant to section 552.108(a)(1) of the Government Code. *See Open Records Decision Nos. 474 (1987), 372 (1983)* (“law-enforcement exception” may be invoked by any proper custodian of information that relates to criminal incident).

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

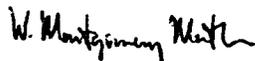
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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 Department of Public 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,



W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/RWP/lmt

Ref: ID# 171382

c: Mr. L. Lamor Williams
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