OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 2, 2003

Ms. Amanda Crawford
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2003-2954

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180380.

The Office of the Attorney General (the "OAG") received a request for certain documents pertaining to the Llano Independent School District, its superintendent, and various members of the Llano Independent School District Board of Trustees. You state that you will release certain responsive information. You claim, however, that the remaining responsive information is excepted from disclosure under sections 552.107, 552.108, 552.111, and 552.136 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted sample records.[1]

Initially, you contend that the majority of the responsive records are excepted from disclosure under section 552.108. Section 552.108(a) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1), Generally, a governmental body claiming section 552.108 must reasonably explain how

[1]We assume that the "sample" records submitted to this office are 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.

and why the release of the requested information would interfere with law enforcement. *See id* 552.301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). In this instance, you explain that the Prosecutor Assistance/Special Investigations Division of the OAG was asked by the District Attorney's Office for the Thirty-third Judicial District (the "district attorney") to assist in the criminal investigation and potential prosecution of the Llano Independent School District Superintendent. *See* Gov't Code § 402.028 (stating that at request of district attorney, attorney general may provide assistance in prosecution of all manner of criminal cases). You further explain that the district attorney is also investigating the superintendent for other criminal violations. Both you and the district attorney state that the release of the records at issue would interfere with the detection, investigation, or prosecution of crime. Thus, the OAG may withhold the information that it has marked under section 552.108(a)(1).[2] *See Houston Chronicle Publ'g 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) (court delineates law enforcement interests that are present in active cases); *see also* Open Records Decision Nos. 474 (1987), 372 (1983) (concluding that Gov't Code § 552.108 may be invoked by any proper custodian of information that relates to pending criminal investigation or prosecution).

You also argue that one of the submitted documents is excepted from disclosure under the deliberative process aspect of section 552.111 of the Government Code. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. *See also City of Garland v. Dallas Morning News,* 22 S.W.3d 351, 364 (Tex. 2000); *Arlington Indep. Sch. Dist. v. Texas Attorney Gen.,* 37 S.W.3d 152 (Tex. App.—Austin 2001, no pet.). Furthermore, in Open Records Decision No. 559 (1990), this office concluded that a preliminary draft of a document that is intended for public release in final form necessarily represents the advice, opinion, and recommendation of the drafter as to the form and content of the final document and as such could be withheld pursuant to the statutory predecessor to section 552.111. Thus, section 552.111 also excepts draft documents to the extent that the draft documents pertain to the policymaking function of the governmental body. We have reviewed the draft document at issue and conclude that it relates to the policymaking processes of the Open Records Division of the OAG. The records also indicate that a final version of the document has been released to the public in the form of Open Records Letter No. 2002-6774 (2002). Accordingly, the OAG may withhold the draft document from disclosure under section 552.111.

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[2]Because we are able to make a determination under section 552.108, we need not address your additional arguments for these records.

Finally, you contend that the submitted credit card numbers and other financial account numbers are excepted from disclosure under section 552.136. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Thus, we agree that the OAG must withhold the marked account numbers under section 552.136. Since you do not claim an exception for the remaining information contained in these financial records, the OAG must release that information to the requestor.

In summary, the OAG may withhold the information that it has marked under section 552.108. You may withhold the submitted draft document under section 552.111. Financial account numbers must be withheld under section 552.136. The remaining financial information must be released.

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).

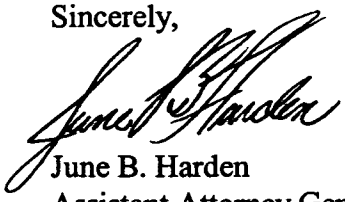
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas 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 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,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 180380

Enc: Submitted documents

c: Mr. George Lucero
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(w/o enclosures)