

The ruling you have requested has been amended as a result of litigation and has been attached to this document.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 24, 2003

Ms. M. Kaye DeWalt
General Counsel
Houston Independent School District
3830 Richmond Avenue
Houston, Texas 77027-5838

OR2003-7638

Dear Ms. DeWalt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190043.

The Houston Independent School District (the "district") received a request for a particular audit. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered the requestor's comments. *See Gov't Code § 552.304 (providing for the submission of public comments).*¹

Section 552.108(a)(1) of the Government Code 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. A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See Gov't Code § 552.301(e)(1)(A); Ex parte Pruitt, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).* By its terms, section 552.108 generally applies only to a law enforcement agency or a prosecutor. However, records that otherwise qualify to be excepted

¹ We note that the requestor states that he previously requested audit information on July 17, 2003 and was told no responsive information existed at that time. The requestor argues that the district should have disclosed the information at issue here in response to his initial request. The district states that the information at issue in the current request was not responsive to the initial request. We cannot resolve disputes of fact in the open records process, and therefore, we must rely on the representations of the governmental body requesting our opinion. Open Records Decision Nos. 554 (1990), 552 (1990).

under section 552.108, such as documentary evidence in a police file on a pending case, do not necessarily lose that status while in the custody of an agency not directly involved with law enforcement. Where a non-law-enforcement agency has evidentiary information in its custody, the custodian of such information may withhold the information under section 552.108 if it demonstrates that the information relates to a pending case and provides a representation from the law enforcement entity that it wishes to withhold the information. *See generally* Open Records Decision Nos. 474 (1987), 372 (1983).

Although you state that release of the submitted materials would compromise an ongoing investigation by the Harris County District Attorney's Office, you have not represented that the investigative or prosecuting agency has requested that this information be withheld from disclosure. Therefore, you have not met your burden in establishing that section 552.108 applies in this instance. Thus, the district may not withhold any information under section 552.108. As you raise no other exceptions to disclosure, we conclude that you must release the submitted information to the requestor.

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,



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 190043

Enc: Submitted documents

c: Mr. Wayne Dolcefino
KTRK-TV
3310 Bissonnet
Houston, Texas 77005
(w/o enclosures)

CAUSE NO. GV304538

HOUSTON INDEPENDENT SCHOOL DISTRICT, <i>Plaintiff,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
V.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, ATTORNEY GENERAL OF THE STATE OF TEXAS, <i>Defendant.</i>	§	98 th JUDICIAL DISTRICT
	§	

AGREED FINAL JUDGMENT

On this date, the Court heard the parties' motion for entry of an agreed final judgment. Plaintiff Houston Independent School District, and Defendant, Greg Abbott, Attorney General of Texas, appeared by and through their respective attorneys and announced to the court that all matters of fact and things in controversy between them had been fully and finally compromised and settled. This cause is an action under the Public Information Act (PIA), TEX. GOV'T CODE CH. 552. The parties represent to the Court that, in compliance with TEX. GOV'T CODE § 552.325(c), the requestor, Wayne Dolcefino was sent reasonable notice of this setting and of the parties' agreement that Houston Independent School District may withhold the information at issue; that the requestor was also informed of his right to intervene in the suit to contest the withholding of this information; and that the requestor, Wayne Dolcefino, has not informed the parties of his intention to intervene. Neither has the requestor filed a motion to intervene or appeared today. After considering the agreement of the parties and the law, the Court is of the opinion that entry of an agreed final judgment is appropriate, disposing of all claims between these parties.

IT IS THEREFORE ADJUDGED, ORDERED AND DECLARED that:

1. The information at issue, specifically an exhibit that is the subject of a criminal investigation by the Harris County District Attorney's Office, is excepted from disclosure by

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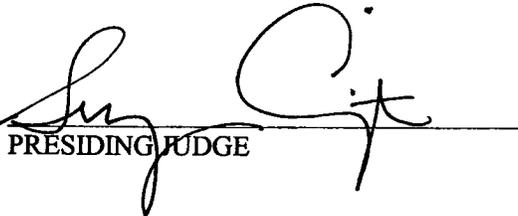
Wm. T. Kelly

DISTRICT CLERK
TRAVIS COUNTY, TEXAS

Gov't CODE §552.108(b)(1).

2. The Houston Independent School District may withhold the information at issue from the requestor.
3. All costs of court are taxed against the parties incurring the same;
4. All relief not expressly granted is denied; and
5. This Agreed Final Judgment finally disposes of all claims between Plaintiff and Defendant and is a final judgment.

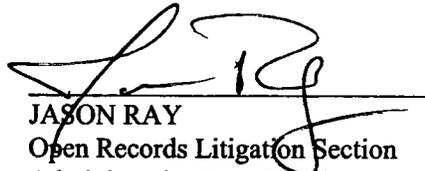
SIGNED this the 26 day of October, 2004.


PRESIDING JUDGE

APPROVED:



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