



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2008

Mr. David Galbraith
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2008-09800

Dear Mr. Galbraith:

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# 316611.

The Houston Independent School District (the "district") received a request for information related to a specified subpoena. You claim that the requested information is excepted from disclosure under sections 552.107, 552.108, and 552.111 of the Government Code, and privileged under Texas Rule of Civil Procedure 192.5 and Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the submitted information.

Initially, we address your argument that the request is for a list of documents outlined in the subpoena. We note that a governmental body is not required to create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). We therefore agree that the district does not need to create a list of the information requested. However, a governmental body must make a good faith effort to relate a request for information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). You explain that the district does not have a list of documents outlined in the subpoena, other than the subpoena itself. Therefore, we consider the district to have made

¹We note that in its brief dated March 22, 2008, the district withdrew its assertions of section 552.103 of the Government Code.

a good faith effort to identify information that is responsive to the request, and we will address the applicability of the claimed exceptions to the submitted subpoena.

Next, you inform us that the requested information was the subject of a prior ruling of this office, issued as Open Records Letter No. 2008-00116 (2008), in which this office concluded that the district may withhold the subpoena at issue under section 552.108(a)(1) of the Government Code. You state that the pertinent facts and circumstances have not changed since the issuance of this ruling. Thus, the district may continue to rely on Open Records Letter No. 2008-00116 and withhold the requested information under section 552.108(a)(1) of the Government Code. *See* Open Records Decision No. 673 (2001) (governmental body may rely on prior ruling as previous determination when (1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); (2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; (3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and (4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 316611

Enc. Submitted documents

c: Dr. Jay Spuck
c/o Mr. David Galbraith
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(w/o enclosures)