



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 21, 2008

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2008-14338

Dear Ms. Rodriguez:

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# 327281.

The Judson Independent School District (the "district"), which you represent, received a request for an incident report generated as a result of a specified incident at a school board meeting. 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.

Initially, we note that the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2008-12321 (2008). In Open Records Letter No. 2008-12321, we ruled that, with the exception of basic information, the district could withhold the incident report at issue pursuant to section 552.108(a)(1) of the Government Code because the report pertained to a criminal investigation that was pending when the district received the request. *See* Gov't Code § 552.108(a)(1) (information excepted from disclosure if release would interfere with the detection, investigation, or prosecution of crime). The district received another request for this information on August 20, 2008, which is the subject of this open records letter ruling. On September 3, 2008, you asserted that the information was excepted under section 552.108(a)(1) because the criminal investigation was pending. However, on September 9, 2008, you amended your September 3rd brief by asserting the information was excepted under section 552.108(a)(2) of the Government Code because, subsequent to the

district receiving the instant request, the police and district attorney had concluded their investigations and determined that the case will not be prosecuted. *See id.* Gov't Code § 552.108(a)(2) (information is excepted under the Act if it deals with criminal investigation that did not result in conviction or deferred adjudication). We note that, although the investigation at issue has now been concluded, it was still pending when the district received this request on August 20th. Accordingly, we conclude that, when the district received the August 20th request, the law, facts, and circumstances on which Open Records Letter No. 2008-12321 was based had not changed. *See generally* Open Records Decision No. 530 at (1989) (public character of records ordinarily cannot be changed after open records request has been made). Accordingly, the district may continue to rely on Open Records Letter No. 2008-12321 as a previous determination and withhold or release the requested information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). As our ruling is dispositive, we do not address your arguments to withhold the information under the Act.

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).

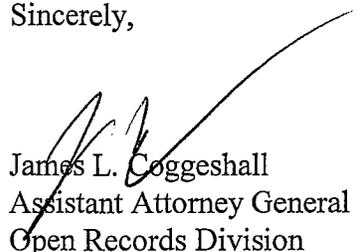
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ma

Ref: ID# 327281

Enc. Submitted documents

c: Ms. Lindsay Kastnar
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