



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 31, 2009

Mr. Miles T. Bradshaw  
Attorney for Royal Independent School District  
Feldman, Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2009-04135

Dear Mr. Bradshaw:

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# 338685.

The Royal Independent School District (the "district"), which you represent, received a request for information pertaining to alleged improper conduct of a named individual. You state that the requestor narrowed his request to exclude "any and all information that, in [the district's] counsel's opinion, is considered information that would be excepted from disclosure under the attorney-client privilege and/or attorney work product [privilege]." See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also Open Records Decision No. 31 (1974) (when presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Section 552.108 excepts from 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[.]" Gov't Code § 552.108(a)(1). A governmental body that claims information is excepted from disclosure under section 552.108 must reasonably explain how and why

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<sup>1</sup>Although you initially raised section 552.135, you have provided no arguments regarding the applicability of this exception. Since you have not submitted arguments concerning this exception, we assume that you no longer urge it. See Gov't Code §§ 552.301(b), (e), .302.

section 552.108 is applicable to the information. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

A school district is not a law enforcement agency. By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. This office has determined, however, that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to incident). Where a non-law enforcement agency has custody of information relating to a pending case of a law enforcement agency, the agency having custody of the information may withhold the information under section 552.108 if the agency demonstrates that the information relates to the pending case and provides this office with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. In this instance, you state that it is the district's "understanding that the [U.S. Department of Justice, Anti-Trust Division (the "DOJ")] has an open investigation on the matter." However, the district has not provided our office with any representation to indicate that the DOJ wishes to withhold the information at issue. Therefore, the district may not withhold the submitted information under section 552.108(a)(1) of the Government Code. As no further arguments against the disclosure of the submitted information are raised, the district must release it to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Laura E. Ream  
Assistant Attorney General  
Open Records Division

LER/dls

Ref: ID# 338685

Enc. Submitted documents

c: Requestor  
(w/o enclosures)