



April 11, 2000

Ms. Denise Nance Pierce  
Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel, L.L.P.  
1700 Frost Bank Plaza  
816 Congress Avenue  
Austin, Texas 78701-2443

OR2000-1410

Dear Ms. Pierce:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID# 134085.

The Austin Independent School District (the "district"), which you represent, received a request for an internal audit report relating to Kealing Junior High School. 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 have reviewed the information you submitted.

We agree that under section 552.022(a)(1) of the Act, a completed audit made of, for, or by a governmental body that is not expressly confidential under other law is subject to required public disclosure "except as provided by Section 552.108[.]" Gov't Code § 552.022(a)(1). Section 552.108, the "law enforcement exception," provides in relevant part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] 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 an exception to required public disclosure under section 552.108 must reasonably explain, if the information in question does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You inform this office that the requested audit report was prepared by the district's Office of Internal Audit, with the assistance of the district's Police Department. You further inform us that the audit report has been provided to that department and to the Travis County District Attorney's office. You explain that release of the report would interfere with an ongoing criminal investigation of matters to which the report pertains. This office has said that where an incident allegedly involving criminal conduct remains under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information relating to the incident. *See* Open Records Decision Nos. 624 at 5-6 (1994), 372 at 4 (1983). Based on your representations and our review of the report, we find that you have demonstrated that its release would interfere with the detection, investigation, or prosecution of crime. *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 No. 216 at 3 (1978). We therefore conclude that the district may withhold the requested audit report from disclosure under section 552.108(a)(1).

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.

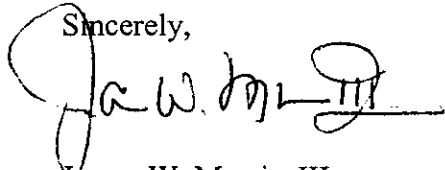
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge 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 Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/ch

Ref: ID# 134085

Encl. Submitted documents

cc: Ms. Amy Grizzaffi  
3201 Steck Avenue  
Austin, Texas 78757  
(w/o enclosures)