



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 10, 2003

Ms. Beverly R. Rickhoff  
Escamilla & Poneck  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2003-3971

Dear Ms. Rickhoff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182489.

The Edgewood Independent School District (the "district"), which you represent, received two requests from the same requestor for several categories of information relating to the district and to a district employee whom the requestor represents. You indicate you have released some of the requested information but claim that information relating to an investigation of the requestor's client 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 includes documents estimating the expenditure of public funds by the district. Section 552.022 of the Government Code provides in relevant part that "all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate" are public and may not be withheld unless it is expressly confidential under other law. Gov't Code § 552.022(a)(5). In accordance with this provision, we have marked documents that may not be withheld unless they are expressly made confidential under other law.

You contend that all of the submitted documents, including the information subject to section 552.022, are excepted from disclosure under section 552.108 of the Government Code. However, this section is a discretionary exception, which is intended to protect only the interests of the governmental body, as distinct from exceptions that are intended to protect information deemed confidential by law or the interests of third parties. *See* Open Records Decision Nos. 177 (1977) (law enforcement exception may be waived), 522 at 4 (1989) (discretionary exceptions in general). As such, a discretionary exception does not constitute "other law" that makes information confidential. Thus, the information subject to section 552.022(a)(5) may not be withheld from disclosure under section 552.108.

We note, however, that this information includes account numbers, which are subject to section 552.136 of the Government Code. This section provides:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;  
or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov’t Code § 552.136. We have marked the types of information that the district must withhold under section 552.136.

We also note that some of the information that is subject to section 552.022 is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

We now address your arguments regarding section 552.108 for the remaining submitted information. Section 552.108(a)(1) 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 raises section 552.108 must reasonably explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

In this instance you inform us that the submitted documents “are records relating to a criminal investigation by the [district’s] Police Department and are in the physical custody of the [district’s] Police Department, which has the authority to investigate crimes and

enforce criminal laws.” In addition, you state that the district’s police department “has referred this investigation to the Texas Rangers for further investigation.” You state that both investigations are on-going and assert that release of the requested information would interfere with these investigations. Based on these representations, we conclude that the release of the remaining submitted information 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 Nos. 474 at 4-5 (1987), 372 (1983) (when incident involving alleged criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information relating to incident).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87. Thus, the district must release the types of information that are considered to be front page information, including a detailed description of the offense, even if this information is not actually located on the front page. *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(1) authorizes the district to withhold the remaining information from disclosure, it may choose to release all or part of it that is not otherwise confidential by law. *See* Gov’t Code § 552.007.

In summary, we have marked documents that must be released in accordance with section 552.022. With the exception of basic information, the remaining submitted information may be withheld pursuant to 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

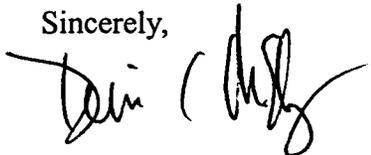
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records 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 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,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 182489

Enc. Submitted documents

c: Ms. Deirdre Hernandez  
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(w/o enclosures)