



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 20, 2003

Ms. Nancy Nelson
Associate Vice President
El Paso Community College
P. O. Box 20500
El Paso, Texas 79998-0500

OR2003-7466

Dear Ms. Nelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189670.

The El Paso Community College District (the "college") received a request for "[a]ny documents at El Paso Community College pertaining to the FBI investigation of the workforce [sic] Development Division and the audit done by Pena, Vogel and Briones firm." You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code and the Family Educational Rights and Privacy Act of 1974 ("FERPA"). We have considered the exceptions you claim and reviewed the submitted information.¹

Initially, we note that most of the submitted information was the subject of a prior ruling by this office. In Open Records Letter No. 2003-7765 (2003), issued October 20, 2003, we concluded that portions of the submitted information were excepted from disclosure under sections 552.108(a)(1) and 552.136 of the Government Code. We understand you to

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

represent that the circumstances existing at the time of the issuance of that ruling have not changed and that, consequently, the four criteria for a “previous determination” established by this office in Open Records Decision No. 673 (2001) have been met in this situation.² Therefore, in reliance on that representation, we conclude that the college may rely on Open Records Letter No. 2003-7465 (2003) as a previous determination regarding the public availability of the previously submitted information. See Gov’t Code § 552.301(f). With respect to the submitted information not previously ruled upon in Open Records Letter No. 2003-7465 (2003), we will address your arguments.

Section 552.108(a)(1) of the Government Code exempts 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.” Section 552.108(b)(1) exempts “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . release of the internal record or notation would interfere with law enforcement or prosecution.” The college is not a “law enforcement agency” for purposes of section 552.108. See Open Records Decision No. 199 (1978) (predecessor statute). However, a non-law enforcement agency may withhold information under section 552.108 if the information relates to possible criminal conduct and has been or will be forwarded to an appropriate law enforcement agency for investigation. See Attorney General Opinion MW-575 (1982), Open Records Decision No. 493 (1988); see also Open Records Decision No. 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, law enforcement exception may be invoked by any proper custodian of information which relates to incident). A governmental body that raises an exception to disclosure under section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. See Gov’t Code § 552.301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

You state that the “subject records consist of information which is or may in the future be part of an ongoing investigation by Federal authorities.” You have also included a letter from the college’s Chief of Police acknowledging the college police department and administration’s participation in the ongoing investigation and which indicates the Federal Bureau of Investigation is presently conducting an investigation of the college’s Workforce

²The four criteria for this type of “previous determination” are 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) of the Government Code; 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 attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

Development Program. Based on these representations and our review of the submitted information, we conclude that the college has demonstrated the applicability of section 552.108(a)(1) to the remaining submitted information. Thus, the college may withhold the information at issue pursuant to section 552.108(a)(1). See *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (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). Because we base our ruling on section 552.108, we need not address your remaining argument.

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,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 189670

Enc. Submitted documents

c: Ms. Sophia Reza
c/o Nancy Nelson
El Paso Community College
P. O. Box 20500
El Paso, Texas 79998-0500
(w/o enclosures)