ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2006

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204-5491

OR2006-11493

Dear Ms. McGowan:

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# 264918.

The Dallas Independent School District (the "district") received a request for information relating to a theft or loss of certain retail gift cards. You claim that some of the requested information is excepted from disclosure under sections 552.108, 552.117, and 552.130 of the Government Code.[1] We have considered the exceptions you claim and have reviewed the information you submitted.

Section 552.108 of the Government Code 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 an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You seek to withhold some of the submitted information under section 552.108(a)(1). You state that the information in question is related to an pending investigation by the district's police

[1]Although you did not claim an exception to disclosure under section 552.117 in requesting this decision, you seek to withhold some of the requested information under section 552.024 of the Government Code. Section 552.024 is not an exception to public disclosure; rather, that section permits an official or employee of a governmental body to request that certain information be withheld from the public under section 552.117. Thus, section 552.117 is the appropriate section to claim. Unlike other exceptions, this office will raise section 552.117 on behalf of a governmental body, as it is a mandatory exception and may not be waived. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).

department. Based on your representation, we conclude that the information that the district seeks to withhold under section 552.108 is excepted from disclosure under section 552.108(a)(1). *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).

Section 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that this information be kept confidential under section 552.024. However, the protection of section 552.117 is applicable only to information that a governmental body holds in its capacity as an employer. *See* Gov't Code § 552.117 (providing that employees of governmental entities may protect certain personal information held by their employers); *see also id.* § 552.024 (establishing election process for Gov't Code § 552.117). The information that you seek to withhold under section 552.117 is contained in a law enforcement record of a criminal investigation. The district's police department holds the information in question as a law enforcement agency, rather than as an employer. Therefore, the district may not withhold any of the submitted information under section 552.117.

Section 552.130 of the Government Code excepts from public disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state. *See* Gov't Code § 552.130(a)(1). We agree that the Texas driver's license number that you have marked must be withheld under section 552.130.

In summary: (1) the information that the district seeks to withhold under section 552.108 of the Government Code is excepted from disclosure under section 552.108(a)(1); and (2) the marked Texas driver's license number must be withheld under section 552.130 of the Government Code. The rest of the submitted information must be released.

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

JWM/vh

Ref: ID# 264918

Enc: Submitted documents

c: Mr. Kent Fischer
Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)