



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 3, 2008

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

OR2008-07498

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# 311936.

The Dallas Independent School District (the "district") received a request for information pertaining to the investigation of a named individual and specified incidents. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the information you have submitted.

Initially, you state that portions of the requested information are subject to a previous ruling issued by this office. On April 7, 2008, this office issued Open Records Letter No. 2008-04630 (2008), in which we ruled that a portion of the submitted information was excepted from public disclosure under section 552.108(a)(1) of the Government Code. We also ruled that with the exception of the summary and statements of the accused, the district must withhold the sexual harassment investigation under section 552.101 in conjunction with common-law privacy and *Ellen*. Further, we ruled that the district must withhold information we marked in the summary and statements of the accused under section 552.101. We presume that the pertinent facts and circumstances have not changed since the issuance of that prior ruling. Thus, we determine that the district must continue to rely on our ruling in Open Records Letter No. 2008-04630 as a previous determination and withhold or release the information in the current request that is identical to the information previously requested and ruled upon by this office in accordance with that decision. *See* Open Records Decision

No. 673 (2001) (governmental body may rely on previous determination when 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); 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; the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). We will address your argument under section 552.108 for the submitted information that was not the subject of the previous ruling.

Next, we note that the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Education Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purposes of our review in the open records ruling process under the Act.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You have submitted for our review, among other information, unredacted education records. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to the information at issue.² Such determinations under FERPA must be made by the educational authority in possession of the education record. We will, however, address the applicability of the claimed exception to the remaining submitted information.

We also note that portions of the remaining information are subject to section 552.022 of the Government Code, which provides in relevant part the following:

- (a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

¹A copy of this letter may be found on the attorney general's website, available at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²In the future, if the district does obtain parental consent to submit unredacted education records, and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The remaining information includes information in an account relating to the receipt of public funds. The district must release this information unless it is expressly confidential under other law. You claim that this information is subject to section 552.108 of the Government Code. Section 552.108 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 is not other law that makes information expressly confidential for the purposes of section 552.022; thus, none of the information we have marked under section 552.022 may be withheld on this basis.

We note that the information subject to section 552.022 contains a bank account number. Section 552.136 is other law for purposes of section 552.022.³ Section 552.136 of the Government Code states that "[n]otwithstanding 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. Accordingly, the district must withhold the bank account number we have marked pursuant to section 552.136.

We now turn to your arguments for the information not subject to section 552.022. 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." *Id.* § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the remaining submitted information pertains to an ongoing criminal investigation being conducted by the district police department and the Dallas County District Attorney's Office. Further, you state, and provide documentation showing, that the Dallas County District Attorney's Office objects to the release of the remaining information. Based on these representations and our review of the submitted documents, we conclude that the release of this 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).

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception, of basic information, which includes a detailed description of the offense, the district may withhold the remaining information that is not subject to section 552.022(a)(3) pursuant to section 552.108(a)(1).

In summary, the district must continue to rely on Open Records Letter No. 2008-04630 as a previous determination with respect to the information at issue in that ruling that is also at issue in the present request. Further, should the district determine that all or portions of the submitted information consists of "education records" that must be withheld under FERPA, then the district must dispose of that information in accordance with FERPA, rather than the Act. The district must withhold the information we have marked in the documents subject to section 552.022(a)(3) under section 552.136 of the Government Code. With the exception of basic information and the information subject to section 552.022(a)(3), the district may withhold the remaining information under section 552.108(a)(1) of the Government Code. The remaining 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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).

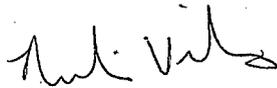
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Melanie J. Villars
Assistant Attorney General
Open Records Division

MJV/jh

Ref: ID# 311936

Enc. Submitted documents

c: Mr. Frank Hammond
4636 Betts Drive
Grand Prairie, Texas 75052
(w/o enclosures)