



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 2, 2009

Mr. W. Montgomery Meitler  
Assistant Counsel  
Office of Legal Services  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494

OR2009-01306

Dear Mr. Meitler:

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# 333903.

The Texas Education Agency (the "agency") received a request for any correspondence regarding the scheduled revision of the science curriculum standards generated since a specified date. You state that most of the responsive information will be released to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.117 of the Government Code. You also state that you notified the Texas Department of Public Safety (the "department") of the request and of its right to submit arguments as to why the requested information should not be released. *See Gov't Code § 552.304* (interested party may submit comments stating why information should or should not be released). We have received comments from the department. We have considered the exceptions you claim and reviewed the submitted information.<sup>1</sup>

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<sup>1</sup>We 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.

Section 552.108(a)(1) of the Government Code generally excepts from disclosure information held by a law enforcement agency 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. *See id.* § 552.108(a)(1). Section 552.108 applies only to records created by an agency, or a portion of an agency, whose primary function is to investigate crimes and enforce criminal laws. *See* Open Records Decision Nos. 493 (1988), 287 (1981). Section 552.108 generally does not apply to records created by an agency whose chief function is essentially regulatory in nature. Open Records Decision No. 199 (1978). An agency that does not qualify as a law enforcement agency may, under certain limited circumstances, claim that section 552.108 protects records in its possession. *See, e.g.*, Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493, 272 (1981). If an administrative agency's investigation reveals possible criminal conduct that the administrative agency intends to report or has already reported to the appropriate law enforcement agency, section 552.108 will apply to information gathered by the administrative agency if its release would interfere with law enforcement. *See* Gov't Code 552.108(a)(1); Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 493 at 2 (1988), 474 (1987), 372 at 4 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to incident).

You state that the information you seek to withhold has been forwarded to the department for a criminal investigation. However, we have received correspondence from the department in which the department states that it has no objection to the release of the documents, and they do not anticipate any criminal charges arising. Therefore, the agency may not withhold any of the submitted information under section 552.108 of the Government Code on behalf of the department.

Next, you claim that a portion of the submitted information is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Pursuant to section 552.117(a)(1), the agency must withhold the personal information that pertains to a current or former employee of the agency who elected, prior to the agency's receipt of the request for information, to keep such information confidential. Such information may not be withheld for individuals who did not make a timely election. You inform us that the individual at issue timely elected confidentiality under section 552.024. Therefore, we agree that the agency must withhold the information you have marked under section 552.117(a)(1). As you raise no other arguments against the disclosure of this information, it must be released.

Finally, you request that this office issue the agency a previous determination to allow the agency to withhold the personal information of its employees pursuant to section 552.117(a)(1) of the Government Code without the necessity of seeking a decision from this office. We decline to issue such a previous determination to the agency at this time.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson  
Assistant Attorney General  
Open Records Division

GH/jb

Ref: ID# 333903

Enc. Submitted documents

c: Requestor  
(w/o enclosures)