



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2009

Mr. S. Anthony Safi
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.
Counsel to El Paso Independent School District
P.O. Box 1977
El Paso, Texas 79950-1977

OR2009-11532

Dear Mr. Safi:

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# 353144.

The El Paso Independent School District (the "district"), which you represent, received a request for the incident report, non-arrest case information, and supporting information related to a specific incident. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You state that submitted incident report 09-0100102 was the subject of a previous request, as a result of which this office issued Open Records Letter No. 2009-02184 (2009). In that ruling, we determined that, with the exception of basic information, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code. *See* Gov't Code § 552.108(a)(1), .108(c); *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). As we have no indication that there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude that the district may rely on Open Records Letter No. 2009-02184 as a previous determination and continue to treat the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (elements of first type of previous determination). We will consider your arguments against disclosure of the remainder of the submitted information, which is not subject to the previous determination.

Section 552.108(a)(1) 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 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 relates to a pending criminal investigation. Based on this representation, we conclude that 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. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

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 “front-page” information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-187; *see also* ORD 127. Thus, with the exception of basic information, the district may withhold the remaining submitted information under section 552.108(a)(1) of the Government Code.

We note that basic information includes the identity and description of complainants, including informers. *See* 531 S.W.2d at 186-187; *see also* ORD 127. In this instance, you argue that the identities of informers are excepted from required public disclosure by section 552.135 of the Government Code, which applies to information held by school districts and provides in relevant part:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student’s or former student’s name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee’s or former employee’s name; or

(3) if the informer planned, initiated, or participated in the possible violation.

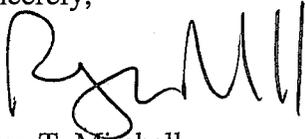
Gov't Code § 552.135(a)-(c). We note that individuals who provide information in the course of an investigation, but do not make the initial report, are not informers for purposes of section 552.135. In this instance, you have not identified the individuals whose identity you seek to withhold under section 552.135. *See id.* §§ 552.301(e)(1)(A), .135. Furthermore, we note that the initial complainant “planned, initiated, or participated in the possible violation.” *See id.* § 552.135(c)(3). Therefore, we find that you have failed to establish that any of the basic information is excepted from required public disclosure by section 552.135. Accordingly, the district may not withhold any information on the basis of section 552.135 when releasing basic information.

In summary, the district may treat the previously ruled upon information in accordance with Open Records Letter No. 2009-02184, and, with the exception of basic information, may withhold the remainder of the submitted information under section 552.108(a)(1) of the Government Code.¹

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, 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,



Ryan T. Mitchell
Assistant Attorney General
Open Records Division

RTM/rl

¹We note that basic information includes a suspect's social security number. However, a governmental body may withhold a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

Ref: ID# 353144

Enc. Submitted documents

cc: Requestor
(w/o enclosures)