



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 31, 2009

Mr. S. Anthony Safi  
Mounce, Green, Myers, Safi, Paxson & Galatzan  
P.O. Box 1977  
El Paso, Texas 79950-1977

OR2009-12231

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# 353970.

The El Paso Independent School District (the "district") received a request for district police incident report number 09-0500211. You claim the submitted incident report 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.

Section 552.108(a)(2) 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 it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that although the case to which the submitted incident report pertains was recently part of a pending investigation, the grand jury reviewing the case returned a "no bill" on the case prior to the district's receipt of the current request. Thus, you assert the submitted incident report pertains to a concluded criminal investigation conducted by the district's police department

(the "department") that did not result in a conviction or deferred adjudication. Therefore, we agree section 552.108(a)(2) is applicable to this report.

Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing 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), and includes the identity of the complainant and a detailed description of the offense, but does not include the identification and description of witnesses. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). You assert that, in this instance, because no arrest has been made and neither the department nor the El Paso District Attorney's Office has determined that a crime was committed, section 552.108(c) does not apply to the submitted information, and, therefore, basic information need not be released. We note, however, that section 552.108 applies to, among other things, information pertaining to the detection, investigation, and prosecution of alleged crimes, and does not require an arrest or a definitive determination that a crime occurred. *See* Gov't Code § 552.108. Therefore, as we have previously found, based on your representations and our review, that section 552.108(a)(2) applies to the submitted information, we also find section 552.108(c) necessarily applies. You claim, however, the complainant's identifying information is excepted from disclosure under section 552.135 of the Government Code.

Section 552.135 of the Government Code provides:

(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 or persons' 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].

*Id.* § 552.135(a)-(b). You indicate the complainant's identifying information is excepted under section 552.135 because the complainant reported a possible violation of criminal law to the department. In this instance, however, the requestor, who is a district employee, is the complainant listed in the report. Section 552.135(c)(2) provides that an informer's identifying information is not excepted from disclosure "if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name[.]" *Id.* § 552.135(c)(2). Accordingly, we find an employee or former employee has a right of access under section 552.135(c)(2) to that employee's or former employee's identifying information. Consequently, none of the complainant's identifying information may be withheld under section 552.135 of the Government Code. Therefore, with the exception of basic information, the district may withhold the submitted incident report under

section 552.108(a)(2) of the Government Code. We note you have the discretion to release all or part of this information that is not otherwise confidential by law. Gov't Code § 552.007.

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 353970

Enc. Submitted documents

c: Requestor  
(w/o enclosures)