



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 22, 2011

Mr. Ricardo R. Lopez
Rogers, Morris & Grover, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2011-02624

Dear Mr. Lopez:

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# 409763.

The North East Independent School District (the "district"), which you represent, received a request for any records pertaining to specified police and human resources investigations regarding the requestor. You claim 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 submitted information.

Initially, we note a portion of the submitted information consists of information subject to section 552.022 of the Government Code, which provides in pertinent part:

(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:

...

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

Gov't Code § 552.022(a)(3). The submitted information contains paid invoices subject to section 552.022(a)(3). The district may only withhold this information if it is confidential under other law. You claim the requested information is excepted from disclosure under section 552.108 of the Government Code. However, this section is a discretionary exception that protects a governmental body's interests and, therefore, is not "other law" for purposes of section 552.022(a)(3). *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 586 (governmental body may waive section 552.108). Therefore, the district may not withhold the information subject to section 552.022(a)(3) under section 552.108 of the Government Code. As you raise no further exceptions to the disclosure of this information, which we have marked, the district must release it. However, we will consider your claim under section 552.108 of the Government Code for the remaining information.

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). We note section 552.108 is generally not applicable to records of an internal investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You provide a letter from the district's police department stating the requested information, including the administrative documents, relates to an ongoing criminal investigation. We note the remaining information includes *Miranda* warnings signed by suspects. Because copies of these documents, which we have marked, have been provided to the suspects, we find their release will not interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). Therefore, the district may not withhold the *Miranda* warnings under section 552.108(a)(1). However, based upon the representation and our review, we conclude release of the remaining 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) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, we conclude section 552.108(a)(1) of the Government Code is generally applicable to the remaining information.

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). This subsection refers to the basic front-page information held to be public in *Houston Chronicle* and includes a

detailed description of the offense. *See* 531 S.W.2d at 186-88. The district must release basic information even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*).

In summary, the district must release the information we have marked subject to section 552.022(a)(3). With the exception of basic information and the *Miranda* warnings we have marked, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 409763

Enc. Submitted documents

c: Requestor
(w/o enclosures)