



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 15, 2011

Mr. Arturo G. Michel  
Thompson & Horton, L.L.P.  
For Brownsville Independent School District  
3200 Southwest Freeway, Suite 2000  
Houston, Texas 77027

OR2011-13383

Dear Mr. Michel:

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# 429970.

The Brownsville Independent School District (the "district"), which you represent, received a request for all documentation regarding the ongoing investigation of a named individual by district administration. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>1</sup> 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"). However, FERPA is not applicable to law enforcement records maintained by the district's police department (the "department") for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Upon review, we find the submitted information constitutes law enforcement records created and

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

maintained by the department for law enforcement purposes. Thus, these records are not subject to FERPA, and no portion of these records may be withheld on that basis.

Next, we address the applicability of section 552.022 of the Government Code to the submitted information. This section provides in pertinent part:

(a) [T]he 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;

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (17). Exhibit B contains district account information that relates to the receipt or expenditure of public funds, so as to fall within the purview of section 552.022(a)(3). Exhibit C contains a magistrate's warning that has been filed with the court, and thus, is subject to section 552.022(a)(17). This information, which we have marked, must be released unless it is expressly confidential under other law. *See id.* Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception that protects only a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, section 552.108 is not "other law" that makes information expressly confidential for purposes of section 552.022. Accordingly, the district may not withhold the information at issue, which we have marked, under section 552.108 of the Government Code. However, because section 552.135 is "other law" for purposes of section 552.022, we will consider the applicability of this exception to the information subject to section 552.022, as well as the remaining information.

We first turn to your claim under section 552.108 of the Government Code with respect to the information that is not subject to section 552.022. Section 552.108 provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

Gov't Code § 552.108(a)(1). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state Exhibits B and C relate to ongoing criminal investigations by the department, and that the release of such information would interfere with the investigation and prosecution of crime. Based upon your representation and our review, we conclude that release of the remaining information in Exhibits B and C 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 that are present in active cases), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976). Therefore, we find section 552.108(a)(1) of the Government Code is applicable.

As you acknowledge, section 552.108 of the Government Code 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* and includes the identification and description of the complainant. *See Open Records Decision No. 127 (1976)* (summarizing types of information considered to be basic information). Accordingly, with the exception of basic information, the district may withhold the remaining information in Exhibits B and C under section 552.108(a)(1) of the Government Code.<sup>2</sup>

Section 552.135 of the Government Code provides the following:

- (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].

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, individuals who provide information in the course of an investigation, but do not make the initial report are not informants for purposes of section 552.135 of the Government Code. In this instance, you claim the information you have highlighted in pink reveals the identities of individuals who reported possible violations of the Texas Penal Code to the department or district administrators. Upon review, we find

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

the district employees who initially reported the allegations to the department or district administrators are the informers. You do not indicate that any of the exceptions in section 552.135(c) apply. *See id.* § 552.135(c) (listing exceptions to section 552.135(b) of the Government Code). Accordingly, the district may withhold the information we have marked under section 552.135 of the Government Code. However, we find you have failed to demonstrate how any portion of the remaining information you have highlighted reveals the identity of an informer for section 552.135 purposes. Accordingly, none of the remaining information may be withheld on that basis.

In summary, the district must release the information we have marked under section 552.022 of the Government Code. With the exception of basic information, the district may withhold the remaining information in Exhibits B and C under section 552.108(a)(1) of the Government Code. However, when releasing basic information, the district may withhold the information we have marked under section 552.135 of the Government Code. The information in Exhibit D must be released.

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, toll free at (888) 672-6787.

Sincerely,



Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/em

Ref: ID# 429970

Enc. Submitted documents

c: Requestor  
(w/o enclosures)