



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 12, 2012

Mr. Tony Resendez  
Counsel for Harlandale Independent School District  
Walsh, Anderson, Gallegos, Green & Treviño, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2012-05298

Dear Mr. Resendez:

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# 450532.

The Harlandale Independent School District (the "the district"), which you represent, received a request for a statement regarding the reasons for the requestor's client's termination, information pertaining to his client's employment with the district over a specified time period, and his client's personnel file. 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 you have only submitted an administrative investigation for our review. Thus, to the extent any additional responsive information existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

We also note you have redacted information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). The district has redacted the requestor's client's social security

number. Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former employee's home address and telephone number, emergency contact information, and social security number excepted from disclosure under section 552.117(a)(1) without the necessity of requesting a decision from this office under the Act, if the employee or official timely elected to withhold such information. *See id.* §§ 552.024(a)-(c), .117(a)(1). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b). We note sections 552.117 and 552.147 of the Government Code protect personal privacy. The requestor has a right of access to his client's social security number under section 552.023 of the Government Code. *See id.* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). Accordingly, the district may not withhold the requestor's client's social security number under section 552.117 or section 552.147 of the Government Code. We will, however, consider your argument for this information under section 552.108 of the Government Code.

Next, we note the submitted information contains paid invoices subject to section 552.022(a)(3) of the Government Code. Section 552.022(a)(3) provides for the required public disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," unless it is "made confidential under [the Act] or other law[.]" Gov't Code § 552.022(a). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception that may be waived and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). As such, section 552.108 does not make information confidential for the purposes of section 552.022(a)(3), and the information subject to section 552.022(a)(3), which we have marked, may not be withheld under that section. However, we note a portion of this information is subject to section 552.136 of the Government Code, which makes information confidential under the Act.<sup>1</sup> Therefore, we will address the applicability of section 552.136 to the information subject to section 552.022(a)(3). We will also address your argument under section 552.108 of the Government Code for the submitted information that is not subject to section 552.022(a)(3).

Section 552.136 of the Government Code provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that

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<sup>1</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument,” and includes an account number. *Id.* § 552.136(a). We have marked an account number the district must withhold under section 552.136.

We now turn to your argument against disclosure of the information not subject to section 552.022(a)(3). Section 552.108(a)(1) 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.” *Id.* § 552.108. 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). Upon review, we find the information not subject to section 552.022(a)(3) consists of an administrative investigation by the district. We note section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See 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); *see also* Open Records Decision No. 350 at 3-4 (1982). We also note section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision No. 372 (1983) (statutory predecessor to section 552.108 may be invoked by any proper custodian of law enforcement information). Thus, where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

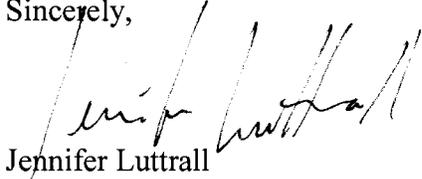
You generally assert the information at issue pertains to a pending criminal investigation and prosecution being conducted by the San Antonio Police Department and Bexar County District Attorney’s Office (the “district attorney’s office”). However, you have not provided a representation from the San Antonio Police Department or district attorney’s office indicating the information at issue relates to a pending criminal prosecution and the release of this information would interfere with the detection, investigation, or prosecution of crime. Therefore, the district may not withhold any of the information not subject to section 552.022(a)(3) under section 552.108.

In summary, district must withhold the information we have marked under section 552.136 of the Government Code. The remaining information must be released.<sup>2</sup>

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,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 450532

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the information being released contains the requestor's client's social security number, to which the requestor has a right of access. See Gov't Code § 552.023(a); ORD 481 at 4. As previously noted, section 552.024(c) of the Government Code authorizes a governmental body to withhold information subject to section 552.117 of the Government Code, which includes a former employee's social security number, without requesting a decision from this office if the former employee chooses not to allow public access to the information in accordance with section 552.024(b). See *id.* §§ 552.024(a)-(c), .117(a)(1). If the district receives another request for this particular information from a different requestor and the requestor's client has elected to keep her social security number confidential under section 552.024(b), then the district may withhold that information under section 552.117(a)(1) pursuant to section 552.024(c) without the necessity of requesting a decision from this office under the Act. If the district receives another request for this particular information from a different requestor and the requestor's client has not elected to keep her social security number confidential under section 552.024(b), then the district may withhold her social security number under section 552.147(b) of the Government Code without the necessity of requesting a decision from this office under the Act. See *id.* § 552.147(b).