



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 17, 2014

Ms. Melody Chappell  
Counsel for the Beaumont Independent School District  
Law Offices of Wells, Peyton, Greenberg, & Hunt, L.L.P.  
P.O. Box 3708  
Beaumont, Texas 77704-3708

OR2014-04450

Dear Ms. Chappell:

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# 516889.

The Beaumont Independent School District (the "district"), which you represent, received a request for documentation of all wire transfers made in October and November of 2013, and any related invoices. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). While you raised section 552.103 within the ten-business-day time period as required by section 552.301(b), you did not raise section 552.108 within the requisite time period. Thus, the district failed to comply with the requirements mandated by section 552.301(b) as to its argument under section 552.108 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although the district seeks to withhold the information at issue under section 552.108 of the Government Code, section 552.108 is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the need of a governmental body, other than the one that failed to timely seek an open records decision, to withhold information under section 552.108 can provide a compelling reason under section 552.302. Open Records Decision No. 586 (1991). You assert the United States Attorney's Office for the Eastern District of Texas (the "U.S. attorney's office") has a law enforcement interest in the requested information. Therefore, we will consider whether the district may withhold the requested information on behalf of the U.S. attorney's office. We will also consider your timely-raised argument under section 552.103.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides, in relevant part, as follows:

(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 unless made confidential under this chapter or 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 information we have marked consists of information relating to the receipt or expenditure of public funds by the district, subject to section 552.022(a)(3) of the Government Code. You seek to withhold this information under sections 552.103 and 552.108 of the Government Code. However, these are discretionary exceptions and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.)

(governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3. Thus, the district may not withhold the information subject to section 552.022 under section 552.103 or section 552.108. However, section 552.136 of the Government Code makes information confidential under the Act.<sup>1</sup> Accordingly, we will consider the applicability of this section to the information subject to section 552.022 of the Government Code. We will also address your arguments under sections 552.103 and 552.108 of the Government Code for the remaining information not subject to section 552.022 of the Government Code.

Section 552.136 of the Government Code states, “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136(b); *see also id.* § 552.136(a) (defining “access device”). Accordingly, the district must withhold the bank account numbers we have marked under section 552.136 of the Government Code.<sup>2</sup> The district must release the remaining information subject to section 552.022 of the Government Code.

We next address your argument under section 552.108 of the Government Code for the information not subject to section 552.022 of the Government Code. Section 552.108(a) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). Generally, 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 inform us the information at issue pertains to a pending criminal prosecution and provide a representation that the U.S. attorney's office objects to its release at this time. Based upon these representations, we conclude section 552.108(a)(1) is applicable, and the 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 that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, you may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>3</sup>

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>2</sup>Section 552.136(c) authorizes a governmental body to redact information protected by section 552.136(b) without requesting a decision. *See id.* § 552.136(d)-(e) (providing requestor may appeal governmental body's decision to withhold information under section 552.136(c) to attorney general, and governmental body withholding information pursuant to section 552.136(c) must provide notice to requestor).

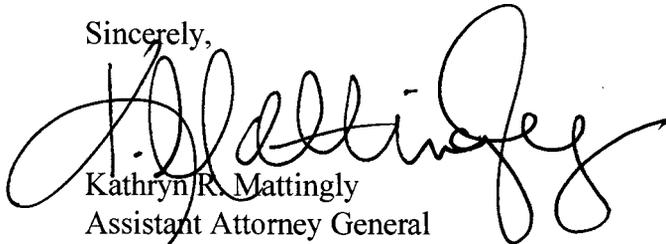
<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.

In summary, the district must withhold the bank account numbers we have marked under section 552.136 of the Government Code. The district must release the remaining information subject to section 552.022 of the Government Code. 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Mattingly', written over the typed name.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 516889

Enc. Submitted documents

c: Requestor  
(w/o enclosures)