



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 7, 2015

Ms. Katheryne Ellison
Assistant General Counsel
Houston Independent School District
4400 West 18th Street
Houston, Texas 77092-8501

OR2015-25531

Dear Ms. Ellison:

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# 589620 (HISD File Nos. Mellon HC091515B; Ramirez KPRC091515; Sweeney KPRC091515B; Dieppa NBC091515; Mugeurza ABC091515; Chin CBS091515; Mellon HC091615B; Brundidge KHOU091615; Momeni M091615; Bradley B100515; Mathis M110615).

The Houston Independent School District (the "district") received eleven requests from ten individuals for information concerning a specified bus crash, including e-mail communications, video records, and personnel records. You state the district does not have information related to some of the categories of information requested.¹ You claim the remaining requested information is excepted from disclosure under sections 552.103

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1–2 (1990).

and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, you state the district has asked one of the requestors to clarify his request related to e-mail communications. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). We understand the district had not received clarification at the time it sought a ruling from this office. Accordingly, the commission has no obligation at this time to release any information that is responsive to the that portion of his request. *See City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten business-day deadline to request an attorney general ruling is measured from the date the request is clarified or narrowed). However, if the requestor provides clarification, then the district must again seek a ruling from this office before withholding any information responsive to the clarification.

Next, we note some of the requested information is subject to section 552.022 of the Government Code, which provides:

[T]he following categories of information are public information and not excepted from required disclosure unless made confidential under [the Act] or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108;

...

(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)(1), (3). The new-driver performance evaluations and vehicle inspections are completed reports subject to section 552.022(a)(1). This information must

²Although you raise section 552.101 of the Government Code, you have not submitted arguments in support of that exception; therefore, we assume you have withdrawn it. *See* Gov't Code §§ 552.301, .302.

³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

be released unless it is made confidential by law or is subject to section 552.108 of the Government Code. The submitted payroll information is subject to section 552.022(a)(3) and must be released unless it is made confidential by law. You seek to withhold all of this information under section 552.103 of the Government Code, but that exception does not make information confidential. *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 section 552.103); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the district may not withhold any of this information under section 552.103. We note you raise section 552.108 for the information subject to section 552.022(a)(1). We will consider your assertion of section 552.108 for that information. However, information subject to section 552.022(a)(3) may not be withheld under section 552.108, as that exception does not make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Accordingly, the district may not withhold the payroll information under section 552.108, and it must release that information to the appropriate requestor.

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(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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note the district is not a law enforcement agency. However, section 552.108 may be invoked by any proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision Nos. 474 at 4–5 (1987), 372 (1983). Where a non-law-enforcement agency is in the custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a different law enforcement agency, the custodian of the records may withhold the information only if it provides this office with (1) a demonstration that the information relates to the pending case, and (2) a representation from the entity with the law enforcement interest stating that entity wishes to withhold the information. You state the requested information relates to an active criminal investigation by the Houston Police Department (the “department”) and the Harris County District Attorney’s Office (the “district attorney’s office”). You have provided an affidavit stating release of the requested information would interfere with that investigation and the prosecution of a crime and the department and district attorney’s office object to the release of the information. *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). Based on these representations and our review, we conclude the district may withhold the remaining requested information under section 552.108(a)(1) of the Government Code on behalf of the department and the district attorney’s office.

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, 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 "Neal Falgoust". The signature is fluid and cursive, written over the word "Sincerely,".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 589620

Enc. Submitted documents

c: Requestor
(w/o enclosures)