



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 11, 2016

Ms. Jeanne C. Collins  
General Counsel  
El Paso Independent School District  
6531 Boeing Drive  
El Paso, Texas 79925

OR2016-10814

Dear Ms. Collins:

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# 609868 (EPISD# 2016.52).

The El Paso Independent School District (the "district") received a request from an investigator for the Texas Education Agency (the "TEA") for all information pertaining to a specified case number involving the arrest of a named individual. 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.

Section 552.108(a) 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 (1) 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). You state, and provide documentation demonstrating, the submitted information relates to an active criminal investigation being conducted by the district's police department and pending prosecution. Based on these representations, we conclude the release of the submitted 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code is applicable to the submitted information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes, among other items, the identity and description of the complainant, but does not include the identities of witnesses who are not complainants. See ORD 127. Thus, with the exception of basic information, the district may generally withhold the submitted information under section 552.108(a)(1) of the Government Code.

However, we must address whether the requestor has a right of access to the information subject to section 552.108(a)(1) of the Government Code. As previously noted, the requestor is an investigator for the TEA, which has assumed the duties of the State Board for Educator Certification (the “SBEC”).<sup>1</sup> The requestor states the TEA is conducting an investigation of a named individual who either has applied for or currently holds educator credentials. Section 22.082 of the Education Code provides the SBEC “may obtain from any law enforcement or criminal justice agency all criminal history record information [“CHRI”] and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21 [of the Education Code].” Educ. Code § 22.082. Section 411.090 of the Government Code grants the SBEC a right of access to obtain CHRI from the Texas Department of Public Safety (the “DPS”) regarding persons who have applied to the SBEC. See Gov't Code § 411.090. Additionally, section 411.0901 of the Government Code specifically provides the TEA with a right of access to obtain CHRI maintained by the DPS regarding certain school employees or applicants for employment. See *id.* § 411.0901. Pursuant to section 411.087 of the Government Code, an agency entitled to obtain CHRI from the DPS also is authorized to “obtain from any other criminal justice agency in this state [CHRI] maintained by that [agency].” *Id.* § 411.087(a)(2). CHRI consists of “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, information, and other formal criminal charges and their dispositions.” *Id.* § 411.082(2).

We find, when read together, sections 22.082 of the Education Code and 411.087 of the Government Code give the TEA a statutory right of access to portions of the information at

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<sup>1</sup>The 79th Texas Legislature passed House Bill 1116, which required the transfer of the SBEC's administrative functions and services to the TEA, effective September 1, 2005.

issue. *Cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14th Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined). Thus, we conclude the district must release to this requestor information that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under Act). With the exception of basic information, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code.<sup>2</sup>

You also contend some of the basic information is confidential under section 552.135 of the Government Code, which 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 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(a)-(b). 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). You state some of the basic information reveals the identity of an employee of the district who reported a possible violation of a law to the district. Based on this representation and our review of the information in question, we conclude the district must withhold the identity of the complainant, which you have marked under section 552.135 of the Government Code.<sup>3</sup>

In summary, the district must release information from the submitted documents that shows the types of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions pursuant to section 22.082 of the Education Code. With the exception of basic information, the district may withhold the remaining information under section 552.108(a)(1) of the Government

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

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

Code. In releasing basic information, the district must withhold the identity of the complainant, which you have marked, under section 552.135 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,



Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/som

Ref: ID# 609868

Enc. Submitted documents

c: Requestor  
(w/o enclosures)