



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 6, 2003

Ms. Ylise Y. Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703

OR2003-7045

Dear Ms. Janssen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188860.

The Austin Independent School District (the "district") received a request for the following information:

1. All payroll records for a named district police officer, including time sheets and overtime/supplemental addenda for the pay periods of May 2003 and June 2003 and/or directly pertaining to all district high school graduation ceremonies in Spring of 2003;
2. Copies of paychecks/receipts outlining all monies paid to the named officer for all hours logged during the same time period; and
3. Copies of rosters, sign-up sheets or assignments for all district officers assigned or volunteered to work regular or overtime hours during the district high school graduation ceremonies in Spring of 2003.

You state that you do not maintain any materials responsive to the third item in the request.¹ You claim that the remaining requested 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.

¹The Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Section 552.108(a)(1) of the Government Code excepts from disclosure information 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. A governmental body that raises section 552.108 must reasonably explain how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). By its terms, section 552.108 generally applies only to a law enforcement agency or a prosecutor. However, records that otherwise qualify to be excepted under section 552.108, such as documentary evidence in a police file on a pending case, do not necessarily lose that status while in the custody of an agency not directly involved with law enforcement. Where a non-law-enforcement agency has evidentiary information in its custody, the custodian of such information may withhold the information under section 552.108 if it demonstrates that the information relates to a pending case and provides a representation from the law enforcement entity that it wishes to withhold the information. *See generally* Open Records Decision Nos. 474 (1987), 372 (1983).

Although you state that the submitted materials have been provided to the Austin Police Department (the "department"), and that the department has presented this information to the Travis County District Attorney's office for possible prosecution, you have not represented that the investigative or prosecuting agency has requested that this information be withheld from disclosure. Therefore, you have not met your burden in establishing that section 552.108 applies in this instance. Thus, the district may not withhold any information under section 552.108.

We note that the submitted materials contain social security numbers which are or may be excepted under section 552.117 of the Government Code. Section 552.117(a)(2) of the Government Code excepts from disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of a peace officer regardless of whether the officer requests confidentiality for this information under section 552.024.² If the individuals whose social security numbers are contained within the submitted records are licensed peace officers, then the district must withhold these numbers, which we have marked, under section 552.117(a)(2).

If the individuals whose social security numbers are contained within the submitted records are not licensed peace officers, these numbers may be confidential under section 552.117(a)(1) of the Government Code, which excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who timely request that such information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, pursuant to section 552.117(a)(1), the district must withhold the social security numbers for all current or former officials or employees who are not licensed peace officers who elected, prior to the district's receipt of this request, to keep such information confidential. The district may not withhold these numbers under section 552.117 for such persons who did not make a timely election.

Regardless of whether the individuals at issue immediately above made timely elections under section 552.024, their social security numbers still may be excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information another statute makes confidential. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act (the "Act") imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, the district should ensure that such numbers are not obtained or maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the social security numbers in the submitted information must be withheld under section 552.117(a)(2) if the individuals whose numbers are at issue are licensed peace officers. If the individuals whose social security numbers are at issue are not licensed peace officers, then the district must withhold these numbers under section 552.117(a)(1) if these individuals elected under section 552.024 to keep such information confidential prior to the district's receipt of this request. If the individuals who are not licensed peace officers did not timely request confidentiality under section 552.024, then their social security numbers still may be confidential under federal law. We have marked the social security numbers in the submitted information. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/lmt

Ref: ID# 188860

Enc. Submitted documents

c: Mr. Bruce Whiteaker
c/o Ylise Y. Janssen
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(w/o enclosures)