



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 7, 2005

Ms. Ylise Janssen
Senior School Law Attorney
Office of the General Counsel
Austin Independent School District
1111 West 6th Street
Austin, Texas 78703

OR2005-08138

Dear Ms. Janseen:

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# 231854.

The Austin Independent School District (the "AISD") received four requests for various types of information pertaining to a named principal, breakdown of a named high school's funding, and information showing this school's diversion of federal or state money. You state you do not have some of the requested information.¹ You also state that you are releasing some of the requested information to the requestors. However, you claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

¹ We note that it is implicit in several provisions of the Act that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 416 at 5 (1984), 342 at 3 (1982), 87 (1975); *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

Because your claim regarding section 552.108 is the broadest, we will discuss it first. Section 552.108 excepts from required public 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[.]” A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *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). You state that Exhibit C of the submitted information pertains to a pending criminal investigation conducted by the AISD Police Department (“the police department”). Based on your representations and our review of Exhibit C, we agree that section 552.108(a)(1) applies to this information and it may be withheld on this basis.

You next assert that certain marked documents in Exhibit B of the submitted information is also exempt from public disclosure under section 552.108. The information at issue in Exhibit B pertains to an AISD administrative investigation. This office has determined that where an incident involving alleged criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information that relates to the incident. *See* Open Records Decision Nos. 474 (1987), 372 (1983). In such a situation, the agency that is acting as proper custodian must demonstrate that the information relates to the pending case and provide this office with a representation from the law enforcement entity that is investigating or prosecuting the incident indicating that it wishes to withhold the information.

You state that the administrative investigation file has been turned over to the police department. Additionally, AISD has submitted a letter from the Senior Sergeant of the police department in which he states that the information at issue is part of pending criminal investigations and the release of the file would interfere with the police department’s ability to investigate these cases. Upon review of the representations made by both the AISD and the police department, we conclude that the release of the marked documents in Exhibit B 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), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we agree that section 552.108(a)(1) is also applicable to the information at issue in Exhibit B. *See* Open Records Decision No. 372 at 4 (1983) (law enforcement exception can apply to information held by proper custodian of information relating to incident allegedly involving criminal conduct that remains under active investigation or prosecution); *see also* Open Records Decision No. 586 (1991) (need of another governmental body to withhold requested information may provide compelling reason for nondisclosure under section 552.108).

We note, however, that 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). Such basic

information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold the information at issue in Exhibits B and C from disclosure pursuant to section 552.108(a)(1). We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

You claim that some of the remaining submitted information is exempt from public disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. Section 21.355 provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In that decision, we determined that the word "teacher," for purposes of section 21.355, is a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id* at 4.

However, we find that the information that you seek to withhold on this basis relates to grievances by AISD employees and are not evaluations as that term is commonly understood. Thus, we find that section 21.355 is inapplicable to this information and it may not be withheld under section 552.101.

Finally you claim that section 552.117 is applicable to some of the remaining submitted information. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this 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 time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, AISD may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. AISD district may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

Among the submitted documents is a copy of the form in which one employee timely elected to keep his home address, home phone number, his social security number, and any information related to his family confidential prior to the date on which AISD received this request. Accordingly, you must withhold the information we have marked under section

552.117(a)(1) of the Government Code for this employee. If the other employees whose information is at issue timely elected to withhold their personal information, then the information we have marked must be withheld under section 552.117. AISD may not withhold this information under section 552.117(a)(1) if the other employees did not make a timely election to keep their information confidential.

In summary, except for the basic information, AISD may withhold the information at issue in Exhibits B and C under section 552.108 of the Government Code. AISD must withhold the personal information that we have marked pursuant to section 552.117 of the employee who elected to keep his information confidential. If the other employees whose information is at issue timely elected to withhold their personal information, then this information we have marked must be withheld under section 552.117. The remaining information must be released to the requestors.

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).

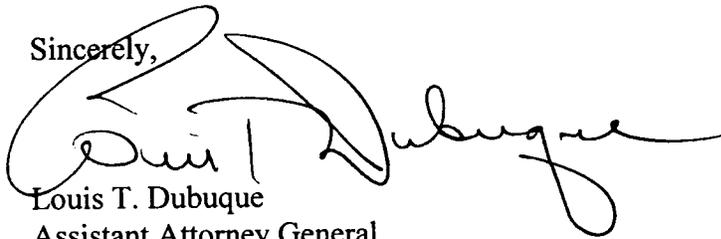
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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,

A handwritten signature in black ink, appearing to read "Louis T. Dubuque". The signature is fluid and cursive, with a large initial "L" and "D".

Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/jh

Ref: ID# 231854

Enc. Submitted documents

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