



ATTORNEY GENERAL OF TEXAS  
G R E G A B B O T T

August 17, 2007

Ms. Nancy Nelson  
Associate Vice President  
El Paso Community College District  
P.O. Box 20500  
El Paso, Texas 79998-0500

OR2007-10629

Dear Ms. Nelson:

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# 286873.

The El Paso Community College District (the "district") received a request for information related to an investigation regarding the alleged sale of "fake GEDs to students[.]" You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note that portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under 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;

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<sup>1</sup>You indicate that the district is withholding some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a). We note that our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made; therefore, we will not address the applicability of FERPA to any of the submitted records. We note that FERPA is not applicable to law enforcement records maintained by the district police department that were created by the department for a law enforcement purpose. See 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8.

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(1), (3), (17). In this instance, the submitted information includes completed evaluations made of, for, or by a governmental body. The district must release the completed evaluations under section 552.022(a)(1) unless they contain information that is excepted from disclosure under section 552.108 or is expressly confidential under other law. The submitted documents also include information contained in contracts and in an account that relate to the receipt or expenditure of public or other funds by the district, as well as information that also is contained in a public court record. The district must release the information contained in the contracts and account under section 552.022(a)(3) unless any of that information is expressly confidential under other law. The district also must release the information that is a matter of public court record under section 552.022(a)(17) unless any of that information is expressly confidential under other law.

Although the district claims that the documents that are subject to subsections 552.022(a)(3) and (a)(17) are excepted from disclosure pursuant to section 552.108 of the Government Code, we note that this section is a discretionary exception to disclosure under the Act and, as such, does not constitute "other law" that makes information confidential.<sup>2</sup> Accordingly, we conclude that the district may not withhold any portion of the documents that are subject to subsections 552.022(a)(3) and (a)(17) under section 552.108. However, since the district claims that the documents that are subject to section 552.022(a)(1) are excepted from disclosure pursuant to section 552.108, we will address the district's claim with respect to that information along with the remaining information that is not subject to section 552.022.

In addition, we note that one of the documents that is subject to section 552.022(a)(3) contains a bank account number that is excepted from disclosure pursuant to section 552.136 of the Government Code. Section 552.136 provides:

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<sup>2</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value;

or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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. Accordingly, the district must withhold the bank account number that we have marked within the documents that are subject to section 552.022(a)(3) pursuant to section 552.136 of the Government Code.

We further note that some of the section 552.022(a)(3) information may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the district received the present request for information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 that the information be kept confidential. We have marked the information in the section 552.022 document that the district must withhold under section 552.117(a)(1), provided that the employee who is the subject of the information timely requested confidentiality for this information under section 552.024.

We now address your section 552.108 claim with regard to the remainder of the submitted information, to include the documents that are subject to section 552.022(a)(1) of the Government Code. Section 552.108 of the Government Code excepts from 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[.]” Gov’t Code § 552.108(a)(1). *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 at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You inform us, and have provided a letter from the district's chief of police stating, that the district's police department objects to the release of the requested information because release would interfere with an ongoing criminal investigation. Based on these representations, we conclude that the district may withhold the remaining information under section 552.108(a)(1) of the Government Code. *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).

In summary, the district must withhold the information that we have marked within one of the documents that is subject to section 552.022(a)(3) of the Government Code pursuant to sections 552.117 and 552.136 of the Government Code. The district must release to the requestor the remaining portions of the documents that are subject to subsections 552.022(a)(3) and (a)(17). The district may withhold the remainder of the submitted information pursuant to section 552.108(a)(1) of the Government Code.

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. 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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/mcf

Ref: ID# 286873

Enc. Submitted documents

c: Mr. Noely Gonzalez  
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El Conquistador  
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(w/o enclosures)