



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 27, 2009

Mr. Reg Hargrove
Assistant Attorney General
Public Information Coordinator
General Counsel Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

OR2009-07196

Dear Mr. Hargrove:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 346560 (PIR No. 09-024669).

The Office of the Attorney General (the "OAG") received a request for information pertaining to a particular investigation of the Kountze Independent School District. The OAG states it released some information and asserts Exhibit B is excepted from disclosure under sections 552.108 and 552.137 of the Government Code. Furthermore, the OAG notified the Texas Education Agency ("TEA") of the request so that it may protect its interest in the withholding of Exhibit C. We have considered the OAG's claimed exceptions to disclosure and have reviewed the submitted information. We have also received and considered TEA's assertion to withhold Exhibit C pursuant to section 552.116 of the Government Code. *See* Gov't Code § 552.304 (interested party may submit written comments concerning availability of requested information).

Section 552.108(a) 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). Generally, 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).

The OAG argues section 552.108(a)(1) is applicable because Exhibit B relates to a pending criminal case conducted by its Criminal Investigations and Prosecutions Divisions. Based upon this representation, we conclude release of the 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 (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, the OAG may withhold Exhibit B under section 552.108(a)(1). Because section 552.108 is dispositive, we do not address the OAG's other argument for this information.

Next, TEA explains it provided Exhibit C to the OAG pursuant to the interagency transfer doctrine and asserts section 552.116 of the Government Code excepts Exhibit C from public disclosure. This office has concluded information may be transferred between governmental bodies that are subject to the Act without waiving exceptions to the public disclosure of that information or affecting its confidentiality. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are based on the well-settled policy of this state that governmental agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* ORD 516. Thus, the release of information by one agency to another agency is not a release to the public for the purposes of section 552.007 of the Government Code. *See* Gov't Code § 552.007 (information released to public must be made available to any person). Pursuant to the interagency transfer doctrine, TEA has not waived its section 552.116 claim by transferring the information to the OAG. Accordingly, we will consider the applicability of section 552.116 to the information the OAG received under the transfer doctrine.

Section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history

background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. TEA states Exhibit C constitutes "audit working papers prepared or maintained by TEA's Division of Financial Audits in conjunction with a financial audit of KISD." Furthermore, TEA explains the audit is authorized by section 39.075(a)(4) of the Education Code. *See* Educ. Code § 39.075(a)(4) (allowing special accreditation investigations to be conducted "in response to established compliance reviews of the district's financial accounting practices and state and federal program requirements"). Based on TEA's representations and our review, we agree Exhibit C constitutes audit working papers the OAG received from TEA pursuant to an interagency transfer. Thus, because TEA seeks to withhold Exhibit C under section 552.116, the OAG, as the recipient of the transferred information, may withhold the information under section 552.116.

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.oag.state.tx.us/open/index_orl.php, 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 346560

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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