



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2010

Ms. Karla Schultz
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.
Attorneys at Law
P.O. Box 2156
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OR2010-00495

Dear Ms. Schultz:

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# 366787.

The Hays Consolidated Independent School District (the "district"), which you represent, received a request for information relating to a specified rental property. You state the district has released some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See Gov't Code* § 552.301(a), (b). Although the district raised section 552.108 within the 10-business-day deadline required by section 552.301, it did not raise section 552.103 until after the 10-business-day deadline had passed. Thus, we find that the district failed to comply with the procedural requirements of section 552.301 with respect to its claim under section 552.103. Section 552.103 is a discretionary exception that protects a governmental body's interests

¹Although you also raise section 552.101, 552.104, 552.107 and rule 503 of the Texas Rules of Evidence, you have not provided any arguments under these exceptions and rule, thus we presume you have withdrawn them.

and, as such, may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas, 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Consequently, the district may not withhold any of the submitted information under section 552.103 of the Government Code. However, we will address your timely raised claim under section 552.108 for the submitted information.

Next, we note the submitted information includes receipts relating to the expenditure of public funds by the district that are subject to section 552.022(a)(3) of the Government Code. Section 552.022 provides:

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:

...

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

...

Gov't Code § 552.022(a)(3). You raise section 552.108 for the information that is subject to section 552.022(a)(3). However, section 552.108 is a discretionary exception that protects a governmental body's interests and therefore is not considered "other law" for purposes of section 552.022; Open Records Decision Nos. 586 (1991) (governmental body may waive section 552.108); 665 at 2 n. 5. Accordingly, the information subject to section 552.022(a)(3), which we have marked, may not be withheld on the basis of section 552.108. However, we will address whether any of the information subject to section 552.022(a)(3) is excepted by section 552.136 of the Government Code. We will also consider your arguments under section 552.108 for the remaining information.

Section 552.136 provides that "[n]otwithstanding 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(b).² The district must withhold the credit card numbers we have marked in the receipts subject to

²The Office of the Attorney General will raise a mandatory exception like section 552.136 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.022(a)(3) pursuant to section 552.136.³ The remaining information in the receipts must be released.

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.” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108 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). 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 provide an affidavit showing, that the remaining information pertains to a pending criminal prosecution with the Hays County District Attorney’s Office. You have also provided us with a representation from the district attorney that it wishes to withhold the information at issue. Based on these representations and our review, we conclude that section 552.108(a)(1) is applicable to the remaining information. Therefore, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code.⁴ *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 credit card numbers we have marked under section 552.136 of the Government Code from the release of the receipts subject to section 552.022(a)(3) of the Government Code. The district may withhold the remaining information under section 552.108(a)(1) 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.

³We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including credit card numbers under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision.

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure.

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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann
Assistant Attorney General
Open Records Division

PFW/jb

Ref: ID# 366787

Enc. Submitted documents

c: Requestor
(w/o enclosures)