



ATTORNEY GENERAL OF TEXAS  
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OR2010-01351

Dear Mr. Saldana:

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# 368572 (Public Information Request No. 5230).

The Brownsville Independent School District (the "district"), which you represent, received a request for the district's and the district's police department's case file with regard to incidents referenced in agenda item 16 at the September 1, 2009 meeting of the Board of Trustees. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information falls within the scope of section 552.022 of the Government Code. Section 552.022(a)(3) provides for required disclosure of "information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body," unless the information is expressly confidential under other law. Gov't Code § 552.022(a)(3). Section 552.022(a)(5) provides for required disclosure of "all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate," unless the information is expressly confidential under other law. *Id.* § 552.022(a)(5). In this instance, the submitted documents include information in a contract relating to the receipt or expenditure of public funds by the district and information used to estimate the need for or expenditure of public funds or taxes by the district. That

information, which we have marked, is subject to sections 552.022(a)(3) and (5). Section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). As such, section 552.108 does not make information expressly confidential for the purposes of sections 552.022(a)(3) and (5). Accordingly, the information subject to sections 552.022(a)(3) and (5) may not be withheld on the basis of section 552.108. Although sections 552.101 and 552.135 of the Government Code are other law for the purposes of section 552.022, upon review we find that these sections are not applicable to the marked information. Therefore, the information we have marked under sections 552.022(a)(3) and (5) must be released. However, we will address your argument under section 552.108, as well as your arguments under sections 552.101 and 552.135, for the remaining information that is not subject to section 552.022.

We note that some of the information subject to section 552.022 appears to be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of materials that are subject to copyright protection unless an exception applies to the information. *See id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

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). 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). You indicate, and provide an affidavit showing, that the district's police department objects to disclosure of the remaining information because release would interfere with a pending criminal investigation and prosecution. Therefore, we conclude that section 552.108(a)(1) is applicable to the remaining information.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) and includes a detailed description of the offense and the identification and description of the complainant. *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). As

you raise sections 552.101 and 552.135 of the Government Code, we will determine whether any of the basic information must be withheld under those exceptions.

Although you raise section 552.101 of the Government Code, you have not directed our attention to any law under which any of the basic information is considered to be confidential for the purposes of section 552.101.<sup>1</sup> See Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). We therefore conclude that the district may not withhold any of the basic information under section 552.101 of the Government Code.

Section 552.135 of the Government Code provides the following:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. See *id.* §§ 552.301(e)(1)(A), .135(a). Upon review, we conclude the district has not demonstrated that section 552.135 is applicable to any portion of the basic information.

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<sup>1</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101.

Therefore, we conclude that the district may not withhold the basic information under section 552.135 of the Government Code.

In summary, the information that is subject to sections 552.022(a)(3) and (5) of the Government Code must be released; however, any copyrighted information may only be released in accordance with copyright law. With the exception of basic information, 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.

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](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# 368572

Enc. Submitted documents

c: Requestor  
(w/o enclosures)