



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2010

Ms. LeAnne Lundy
Feldman, Rogers, Morris & Grover, L.L.P.
Attorneys for Galveston Independent School District
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2010-08406

Dear Ms. Lundy:

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# 382107.

The Galveston Independent School District (the "district"), which you represent, received a request for information revealing whether a named individual is or was a district police officer, including any information regarding any termination, and any complaints pertaining to the named individual. You state the district has provided the requestor with the named individual's dates of service. You also state the district does not have information responsive to the request for complaints by the public pertaining to the named individual.¹ You state you have redacted social security numbers from the submitted information pursuant to section 552.147 of the Government Code.² You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, 552.1175, and 552.130 of the Government Code.³ We have considered the exceptions you claim and reviewed the

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

²Section 552.147(b) authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

³Although, you also initially raised sections 552.102, 552.107, and 552.111 of the Government Code as exceptions to disclosure of the requested information, you have provided no arguments regarding the applicability of these sections. Since you have not submitted arguments concerning these exceptions, we assume that you no longer urge them. *See Gov't Code* §§ 552.301(b), (e), .302. Although you also raise section 552.022 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under other law. *See id.* § 552.022.

submitted information.⁴ We have also considered comments submitted by a representative of the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note that the submitted information is part of a completed investigation, which is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides a completed investigation is public information unless it is confidential by other law or excepted from disclosure under section 552.108. *Id.* § 552.022(a)(1). Section 552.103 is a discretionary exception and does not make information confidential; therefore, the district may not withhold the submitted information under this exception. *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 473 (1987) (section 552.103 may be waived). Pursuant to section 552.022(a)(1), we will consider your argument under section 552.108 of the Government Code. Further, as sections 552.101, 552.1175, and 552.130 of the Government Code constitute “other law” that makes information confidential for the purposes of section 552.022, we will also consider your arguments under those sections.

Section 552.108 of the Government Code excepts from 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). In this instance, the submitted information consists of information pertaining to an internal affairs investigation made for or by the district's police department. We note that section 552.108 is generally not applicable to records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). However, you state that the submitted information is related to an incident that is currently pending criminal investigation and prosecution by the Galveston County District Attorney's Office (the “district attorney”). You further inform us that at the time of the district's receipt of the instant request, the criminal case was scheduled to be considered by the grand jury for possible indictment of the named individual. You state that the district attorney has asked that the submitted information be withheld from disclosure as its release would interfere with the investigation and prosecution. Based upon

⁴We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

your representations and our review, we find that section 552.108(a)(1) is applicable to the submitted information. 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).

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). Basic information refers to the information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-88; see also Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, which must be released, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.⁵

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

Sincerely,



Laura Ream Lemus
Assistant Attorney General
Open Records Division

LRL/jb

Ref: ID# 382107

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)

⁵As our ruling is dispositive, we need not address your remaining arguments against the disclosure of the submitted information.