



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 12, 2011

Ms. Ellen H. Spalding  
For Klein Independent School District  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2011-09884

Dear Ms. Spalding:

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# 423483.

The Klein Independent School District (the "district"), which you represent, received a request for information pertaining to case number 110419. You state the district has provided some of the requested information to the requestor. You claim the remaining requested information is excepted from disclosure under sections 552.102, 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the information at issue is subject to section 552.022 of the Government Code, which states, in relevant part:

- (a) Without limiting the amount or kind of information that is public information under this chapter, 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:

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<sup>1</sup>We assume 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 those records contain substantially different types of information than that submitted to this office.

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The requested information consists of a completed criminal investigation conducted by the district's police department. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. You claim the information at issue is excepted under section 552.103 of the Government Code. This section, however, is a discretionary exception to disclosure that protects a governmental body's interest and may be waived. *See id.* § 552.007; *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), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential). As such, it is not other law that makes information confidential for the purposes of section 552.022. Consequently, the district may not withhold the information at issue under section 552.103 of the Government Code. You also claim the requested information is excepted under sections 552.102 and 552.108 of the Government Code. Because information subject to section 552.022(a)(1) may be withheld under sections 552.102 and 552.108, we will consider the applicability of these exceptions to the requested information.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov't Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. 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 the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A). You state the requested information pertaining to case number 110419, which includes an incident report and other investigative records, pertains to a concluded criminal investigation conducted by the district's police department that did not result in a conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the information at issue.

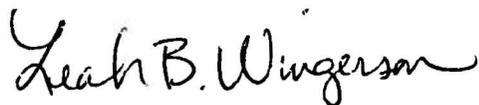
Section 552.108, however, does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976)

(summarizing types of information considered to be basic information). Thus, with the exception of basic information, the district may withhold the information at issue under section 552.108(a)(2) of the Government Code.<sup>2</sup>

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,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 423483

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure for portions of this information.