



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2011

Mr. Humberto F. Aguilera
For the Harlandale Independent School District
Escamilla, Poneck & Cruz, L.L.P.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2011-17585

Dear Mr. Aguilera:

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# 437308.

The Harlandale Independent School District (the "district"), which you represent, received a request for all records over a specified period of time (1) to or from the district, the district's Board of Trustees, or the district's representative pertaining to a specified company and/or a specified individual, (2) to or from the media, the San Antonio Express-News and/or its Editorial Board pertaining to the specified company and/or the specified individual, and (3) pertaining to any alleged improprieties by the specified company and/or the specified individual. You state the district does not have any information responsive to items one and two of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹In responding to a request for information under the Act, a governmental body is not required to disclose information that did not exist at the time the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

²Although you also raised section 552.111 of the Government Code in your initial brief to this office, you have not submitted arguments explaining how section 552.111 applies to the submitted information; therefore, you have waived your arguments under that exception. *See Gov't Code* §§ 552.301, .302.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the request was received by the district. This ruling does not address the public availability of the information that is not responsive to the request, and the district is not required to release this information in response to this request. *See Bustamante*, 562 S.W.2d at 268.

We also note the submitted information contains the minutes of public meetings of the district's Board of Trustees. The minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, chapter 551 of the Government Code. *See id.* §§ 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). As a general rule, the exceptions to disclosure found in the Act, such as sections 552.107 and 552.108, do not apply to information other statutes make public. *See Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989)*. Therefore, the district must release the submitted public meeting minutes, which we have marked, pursuant to section 551.022 of the Government Code.

Next, you inform us that a portion of the submitted information was "leaked" to a local news reporter. You state that the release of this information was not an authorized action by the district and that the district maintains the confidentiality of the information at issue. Prior decisions from our office have concluded that the involuntary disclosure of information on a limited basis, through no official action and against the wishes and policy of the governmental body, does not waive exceptions under the Act. *See Open Records Decision Nos. 387 at 3 (1983) (information not voluntarily released by governmental body that nevertheless comes into another party's possession not henceforth automatically available to everyone), 376 at 2 (1983). Cf. Open Records Decision No. 676 at 10-11 (2002) (where document has been voluntarily disclosed to opposing party, attorney-client privilege has generally been waived)*. Based on your representations and our review, we find the district has not waived its claims that this information is excepted from disclosure. Therefore, we will consider the exceptions you raise for this information as well as for the remaining information.

Section 552.108(a)(1) 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). 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). You state that the submitted documents are being held by the district's police department and that they pertain to a case that is the subject of an ongoing criminal investigation. Based on your

representation, we conclude the release of the information at issue 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) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we agree the district may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the district must release the public meeting minutes we have marked pursuant to section 551.022 of the Government Code. The district may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/sdk

Ref: ID# 437308

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we need not address your remaining arguments against disclosure.