ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2011

Mr. Humberto F. Aguilera
Escamilla, Poneck & Cruz, LLP
P.O. Box 200
San Antonio, Texas 78291-0200

OR2011-18677

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# 439287.

The Harlandale Independent School District (the "district"), which you represent, received a request for any and all incident and/or police reports regarding financial records at Kingsborough Middle School within the last year.[1] You state you have provided the requestor with some of the requested information. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the majority of the submitted information is not responsive to the instant request for information because it was created after the date the request was received. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request. *See Econ.*

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[1]You state the district sought and received clarification of the request for information. *See* Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

Opportunities Dev. Corp. v. Bustamante, 562 S.W.2d 266, 268 (Tex. Civ. App.—San Antonio 1978, writ dism'd).

Next, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, does not permit state and local educational authorities to disclose to this office, without parental consent or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.[2] Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). In this instance, the responsive information includes unredacted education records. Because our office is prohibited from reviewing an education record to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted documents. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records.[3] We will, however, consider your argument against disclosure of the submitted information.

We note portions of the submitted information are subject to section 552.022 of the Government Code. Section 552.022(a) provides in relevant part the following:

> 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 unless made confidential under this chapter or other law:
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> . . .
>
> (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). In this instance, the responsive information contains information in accounts, contracts, invoices, purchase orders, and receipts that pertain to the

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[2]A copy of this letter may be found on the Office of the Attorney General's website: http://www.oag.state.tx.us/open/20060725usdoe.pdf.

[3]In the future, if the district does obtain parental or an adult student's consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

expenditure of funds by the district. This information is subject to section 552.022(a)(3). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception and does not make information confidential under the Act. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602 §§ 3-26, 28-37 (providing for "confidentiality" of information under specified exceptions); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the information subject to section 552.022(a)(3) may not be withheld under section 552.108. However, we note portions of this information are subject to sections 552.101, 552.102, 552.130, and 552.136 of the Government Code.[4] Because section 552.101 protects information made confidential under law, and sections 552.102, 552.130, and 552.136 make information confidential under the Act, we will address the applicability of these exceptions to the information subject to section 552.022(a)(3). *See* Gov't Code §§ 552.102, .130, .136 (providing for "confidentiality" of information under sections 552.102, 552.130, and 552.136).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses information made confidential by other statutes, such as chapter 560 of the Government Code, which provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *See id.* §§ 560.001 (defining "biometric identifier" to include fingerprints), .002 (prescribing manner in which biometric identifiers must be maintained and circumstances in which they can be released), .003 (biometric identifiers in possession of governmental body exempt from disclosure under the Act). We have marked fingerprints in the responsive information. You do not inform us, and the responsive information does not indicate, section 560.002 permits the disclosure of the submitted fingerprint information in this instance. Therefore, the district must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *Id.* § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

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[4]The Office of the Attorney General will raise mandatory exceptions 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 552.130 of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license, vehicle title, or registration issued by an agency of this state or another state or country. Gov't Code § 552.130(a). Therefore, the district must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.136 of the Government Code 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." *Id.* § 552.136(b). An access device number is one that may be used to "(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument," and includes an account number. *Id.* § 552.136(a). The information subject to section 552.022 contains bank routing numbers and bank account numbers, which we have marked. The district must withhold this information under section 552.136 of the Government Code.

Section 552.108(a)(1) 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[.]" *Id.* § 552.108(a)(1). Generally, 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). In this instance, the information at issue consists of administrative records. We note section 552.108 is generally not applicable to purely administrative records that do 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.). You state that the responsive documents are being held by the district's police department and are being used in an ongoing criminal investigation relating to potential criminal offenses. Based on your representation, we conclude the release of the remaining information 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), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests present in active cases); *see also* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by proper custodian of information relating to pending investigation or prosecution of criminal conduct). Therefore, the district may withhold the information we marked under section 552.108(a)(1) of the Government Code.

In summary, the district must withhold the fingerprints we marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code. The district must withhold the information we have marked under section 552.102(a) of the Government Code. The district must withhold the driver's license information we marked under section 552.130 of the Government Code. The district must withhold the bank routing numbers and bank account numbers we marked under section 552.136 of the Government

Code. The district may withhold the information we marked under section 552.108 of the Government Code. The remaining information must be released.

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,

Damien Shores
Assistant Attorney General
Open Records Division

DS/sdk

Ref: ID# 439287

Enc. Submitted documents

c: Requestor
(w/o enclosures)