



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 18, 2012

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

OR2012-00826

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# 442619.

The Harlandale Independent School District (the "district"), which you represent, received a request for information related to the requestor's client's termination. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we note portions of the submitted information are made expressly public under section 552.022 of the Government Code, which provides, in relevant part, as follows:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

¹Although you raised section 552.101 of the Government Code, you did not provide any arguments regarding the applicability of this section. Therefore, we assume you have withdrawn this exception. *See* Gov't Code §§ 552.301, .302.

...

(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, portions of the information consist of checks, purchase orders, invoices, and vouchers. These documents fall within the purview of subsection 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 id.* §552.007, 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 at issue may not be withheld under section 552.108. We note the information subject to section 552.022 is also subject to sections 552.101 and 552.136 of the Government Code, which do make information confidential under the Act. Accordingly, we will consider the applicability of these sections to the information subject to section 552.022. We will also consider your arguments under section 552.108 for the information not subject to section 552.022 of the Government Code.

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). A governmental body claiming section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to a pending criminal investigation with the district's police department. Based on your representations and our review, we find that release of the information not subject to section 552.022 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). Accordingly, the district may withhold the information not subject to section 552.022 under section 552.108(a)(1) of the Government Code.

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. Section 552.101 encompasses information protected by other statutes such as section 560.003 of the Government Code, which provides “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). Section 560.002 of the Government Code provides, however, that “[a] governmental body that possesses a biometric identifier of an

individual . . . may not sell, lease, or otherwise disclose the biometric identifier to another person unless . . . the individual consents to the disclosure[.]” *Id.* § 560.002(1)(A). Accordingly, we find a person, or the person’s authorized representative, has a right of access under section 560.002(1)(A) to that person’s biometric information. The submitted information contains various fingerprints, which we have marked. We are unable to determine whether the marked fingerprints belong to the requestor’s client. Accordingly, we must rule conditionally. If the marked fingerprints belong to the requestor’s client, then he has a right of access to this information under section 560.002(1)(A). *See id.* § 552.002(1); *id.* § 552.023(a) (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to the person and is protected from public disclosure by laws intended to protect that person’s privacy interests). Thus, if the requestor has a right of access to his client’s marked fingerprints pursuant to section 560.002(1)(A), then the district must release that information to him. If the marked fingerprints do not belong to the requestor’s client, however, then the district must withhold this information under section 552.101 in conjunction with section 560.003.

Section 552.136(b) of the Government Code states that “[n]otwithstanding any other provision of [the Act], 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). This office has determined that bank account and bank routing numbers are access device numbers for purposes of section 552.136. *See id.* § 552.136(a) (defining “access device”). Therefore, the district must withhold the information we have marked in the remaining information pursuant to section 552.136 of the Government Code.

In summary, the district may withhold the information not subject to section 552.022 under section 552.108(a)(1) of the Government Code. If the requestor has a right of access to his client’s marked fingerprints pursuant to section 560.002(1)(A) of the Government Code, then the district must release that information to him. If the marked fingerprints do not belong to the requestor’s client, however, then the district must withhold this information under section 552.101 of the Government Code in conjunction with section 560.003. The district must withhold the information we have marked under section 552.136 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,

A handwritten signature in black ink, appearing to read 'VB', with a long horizontal flourish extending to the right.

Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

Ref: ID# 442619

Enc. Submitted documents

c: Requestor
(w/o enclosures)