



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 11, 2013

Mr. Darin Darby  
Counsel for Comal Independent School District  
Escamilla, Poneck & Cruz, L.L.P.  
P.O. Box 200  
San Antonio, Texas 78291-0200

OR2013-05833

Dear Mr. Darby:

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# 483684.

The Comal Independent School District (the "district"), which you represent, received a request for the final report on the investigation into alleged misconduct by a named employee. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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). 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.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. A school district is not a law enforcement agency. This office has concluded, however, that section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474* (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under 552.108 as information relating to the pending case of a law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. *See id.*

You state the submitted information deals with the detection of possible violations of the Texas Penal Code and the documents are currently held by the Comal County Sheriff's Office as a part of its investigation of possible criminal activity. You have provided documentation from the Comal County District Attorney's Office indicating it objects to disclosure of the submitted information because its release would interfere with an ongoing criminal investigation and potential prosecution. Based on these representations, we conclude that the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.<sup>1</sup> *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).

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,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

Ref: ID# 483684

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.