



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 24, 2013

Mr. S. Anthony Safi  
Counsel for El Paso Independent School District  
Mounce, Green, Myers, Safi, Paxson & Galatzan, P.C.  
P.O. Box 1977  
El Paso, Texas 79999-1977

OR2013-10669

Dear Mr. Safi:

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# 491184 (EPISD ORR #2013.123).

The El Paso Independent School District (the "district"), which you represent, received a request for (1) information produced by Weaver and Tidwell, L.L.P. ("Weaver") relating to the district during a specified time, (2) all reports by Weaver, including two specified reports, to the district, (3) all statements, billings, or other requests for payment by Weaver to the district or the Texas Education Agency (the "TEA") during a specified time period, (4) all correspondence from or to a named attorney during a specified time period, (5) information maintained or developed by the TEA that references district administrators or other employees who were proposed or mentioned for termination or investigation during a specified time period, and (6) all communication between and among the TEA, the district, and the United States Department of Education relating to any investigations, reviews, or audits of the district during a specified period.<sup>1</sup> You state the district will release and has released some of the requested information. You state the district will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C.

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<sup>1</sup>We note the district sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

§ 1232g(a).<sup>2</sup> See Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). You claim the submitted information is excepted from disclosure under sections 552.026, 552.101, 552.102, 552.103, 552.107, 552.108, 552.111, 552.114, 552.116, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state portions of the submitted information were the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2013-02527 (2013), 2013-00774 (2013), 2012-15075 (2012), 2012-14606 (2012), 2012-07813 (2012), and 2011-14897 (2011). In Open Records Letter No. 2013-02527, we concluded, (1) with the exception of the information we marked for release, the district may withhold the information you marked under Texas Rule of Evidence 503, (2) the district must withhold the information we marked under section 552.136 of the Government Code, (3) the district may withhold the information we marked under section 552.107(1) of the Government Code, and (4) the remaining information must be released. In Open Records Letter No. 2013-00774, we concluded, with the exception of the information noted, which has been previously released, the district may withhold the information at issue under section 552.103 of the Government Code. In Open Records Letter No. 2012-15075, we concluded the district may withhold the information at issue under section 552.116 of the Government Code. In Open Records Letter No. 2012-14606, we concluded the district may withhold the information at issue under section 552.107(1) of the Government Code. In Open Records Letter No. 2012-07813, we concluded the district must withhold the information at issue under section 552.101 of the Government Code in conjunction with federal law. In Open Records Letter No. 2011-14897, we concluded the district must withhold the information at issue under section 552.101 in conjunction with section 21.355 of the Education Code. You state the law, facts, and circumstances on which the prior rulings were based have not changed. Accordingly, we conclude the district may continue to rely on Open Records Letter Nos. 2013-02527, 2013-00774, 2012-15075, 2012-14606, 2012-07813, and 2011-14897 as previous determinations and withhold or release the submitted information in accordance with those rulings. See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is

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<sup>2</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

We note section 552.007 of the Government Code provides if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See* Gov't Code § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district may not now withhold any previously released information unless its release is expressly prohibited by law or the information is confidential under law. Although you raise section 552.108 of the Government Code, this section does not prohibit the release of information or make information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Thus, to the extent any portion of the submitted information was previously released in accordance with Open Records Letter Nos. 2013-02527, 2013-00774, 2012-15075, 2012-14606, 2012-07813, and 2011-14897, the district may not now withhold such information under section 552.108. However, we will address your argument under this exception for the information that was not released in accordance with Open Records Letter Nos. 2013-02527, 2013-00774, 2012-15075, 2012-14606, 2012-07813, and 2011-14897.

Section 552.108 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 must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 applies to information held by a “law enforcement agency.” However, 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 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You inform us, and have provided documentation demonstrating, the District Attorney's Office for the 34th Judicial District (the “district attorney's office”) objects to disclosure of the remaining information because its release would interfere with a pending criminal investigation. Based on your representation and the submitted documentation, we find

section 552.108(a)(1) is applicable to the information at issue. *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 present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>3</sup>

In summary, the district may continue to rely on Open Records Letter Nos. 2013-02527, 2013-00774, 2012-15075, 2012-14606, 2012-07813, and 2011-14897 as previous determinations and withhold or release the submitted information in accordance with those rulings. The district may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



David L. Wheelus  
Assistant Attorney General  
Open Records Division

DLW/dls

Ref: ID# 491184

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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