



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 14, 2013

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

OR2013-19875

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# 505592 (EPISD ORR Nos. 2013.370 and 2013.374).

The El Paso Independent School District (the "district"), which you represent, received a request for the personnel file of a named employee, any complaints, concerns, allegations, or grievances which have been leveled against the named employee, any documents provided to the district regarding the any allegations against the named employee, and any documents relied on by the district in placing the named employee on administrative leave. The district received a second request from the same requestor for ten additional categories of information pertaining to investigations into the named employee, the investigation and grievances concerning a separate named employee, video recording of a portion of a specified district Board of Trustees meeting, and documents related to the most recent Needs Assessment of a specified high school. You inform us you will release a portion of the information responsive to both requests for information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, 552.111, and 552.135 of the Government Code. We also understand you have notified an individual whose interests may be implicated by some of the submitted information of his right to submit comments to this office explaining why the information pertaining to him should not be released. *See* Gov't Code § 552.304 (interested party may submit comments

stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

Initially, we note a portion of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-18904 (2013). In Open Records Letter No. 2013-18904, we determined the district may withhold the information at issue under section 552.108(a)(1) of the Government Code. We have no indication there has been any change in the law, facts, or circumstances on which the prior ruling was based. Accordingly, we conclude the district may rely on Open Records Letter No. 2013-18904 as a previous determination and withhold the information that was previously submitted to and ruled on by this office accordance with that ruling.² 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 addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, we will consider your arguments against the disclosure of the information not previously submitted to and ruled on by this office.

Next, we note a portion of the submitted information consists of a completed investigation by the district that is subject to section 552.022(a)(1) of the Government Code, which reads as follows:

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:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). You assert this information is excepted from release under section 552.103 of the Government Code. However, this section is discretionary and does not make information confidential under the Act. See *Dallas Area Rapid Transit v. Dallas*

¹We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

²As our ruling is dispositive, we need not address your arguments against disclosure of this information.

Morning News, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold this information under section 552.103. However, information subject to section 552.022(a)(1) may be withheld under section 552.108, and sections 552.101 and 552.135 of the Government Code make information confidential under the Act. Accordingly, we will consider the applicability of these sections to the information subject to section 552.022(a)(1). We will also address your arguments 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 information 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 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See* Open Records Decision Nos. 474 at 4-5 (1987). Where a non-law-enforcement agency possesses information relating to a pending case of a law enforcement agency, the non-law-enforcement agency may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information.

You have submitted correspondence showing the United States Attorney's Office for the Western District of Texas objects to the release of the submitted information because it pertains to a pending criminal investigation that is being handled by that office and the Federal Bureau of Investigation. Based upon this representation and our review, we determine 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) (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). Therefore, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code.³

In summary, the district may rely on Open Records Letter No. 2013-18904 as a previous determination and withhold the information that was previously submitted to and ruled on

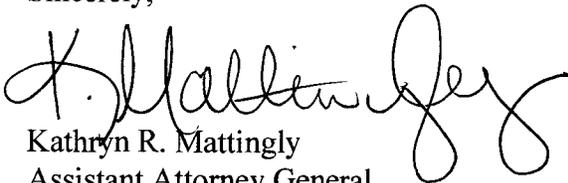
³As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

by this office accordance with that ruling.⁴ The district may withhold the remaining information under section 552.108(a)(1) of the Government Code.

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, 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 505592

Enc. Submitted documents

c: Requester
(w/o enclosures)

Mr. Ruben Cordero
c/o Mr. Brandon Y. Brim
Brim, Arnett, Robinett, Connors & McCormick
2525 Wallingwood Drive, Building 14
Austin, Texas 78746
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.