



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2013

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

OR2013-20163

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# 506110 (EPISD ORR No. 2013.379).

The El Paso Independent School District (the "district"), which you represent, received a request for twelve categories of information pertaining to two named employees, certain policies, procedures, and guidelines, and the district's organizational chart. You state the district will make some of the requested information available to the requestor. 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 and privileged under Texas Disciplinary Rule of Professional Conduct 1.05, Texas Rule of Civil Procedure 192.5, and Texas Rule of Evidence 503.¹ We have considered your arguments and reviewed the submitted representative sample of information.²

¹Although you raise section 552.101 of the Government Code in conjunction with Texas Disciplinary Rule of Professional Conduct 1.05, Texas Rule of Civil Procedure 192.5, and Texas Rule of Evidence 503, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 677 (2002), 676 at 1-2 (2002), 575 at 2 (1990).

²We 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.

Initially, you state some of the requested information was the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2013-18904 (2013) and 2013-19875 (2013). In Open Records Letter No. 2013-18904, we determined the district may withhold the submitted information under section 552.108(a)(1) of the Government Code. In Open Records Letter No. 2013-19875, we determined the district may rely on Open Records Letter No. 2013-18904 as a previous determination and withhold the information at issue in accordance with that ruling and may withhold the remaining information 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 rulings were based. Accordingly, we conclude the district may rely on Open Records Letter Nos. 2013-18904 and 2013-19875 as previous determinations and withhold the information that was previously submitted to and ruled on by this office 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 addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Because the submitted information was not at issue in the previous rulings, we will address the public availability of this information.

Next, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body[,]” unless it is excepted by section 552.108 of the Government Code or “made confidential under [the Act] or other law[.]” Gov’t Code § 552.022(a)(1). The submitted information consists of a completed investigation by the district and must be released unless it is either excepted under section 552.108 of the Government Code or is confidential under the Act or other law. Although you assert the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code, these sections are discretionary and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 439, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (attorney work product privilege under section 552.111 may be waived), 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 665 at 2 n.5 (2000) (discretionary exceptions generally), 470 at 7 (1987) (governmental body may waive statutory predecessor to section 552.111 deliberative process). Therefore, the district may not withhold the submitted information under section 552.103, 552.107, or 552.111. Further, the Texas Disciplinary Rules of Professional Conduct are not considered “other law” for purposes of section 552.022. Consequently, we do not address your argument under rule 1.05 and the district may not withhold any of the submitted information on this basis. *See* ORD 676 at 3-4. However, the Texas Supreme Court has held the Texas Rules of Civil Procedure and the Texas Rules of Evidence are “other law” that make information expressly confidential for the purposes of section 552.022. *In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Additionally, information subject to section 552.022(a)(1)

may be withheld under section 552.108 of the Government Code, and sections 552.101 and 552.135 of the Government Code make information confidential under the Act. Accordingly, we will consider your arguments under sections 552.101, 552.108, and 552.135 of the Government Code, Texas Rule of Civil Procedure 192.5, and Texas Rule of Evidence 503.

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 any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)* (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). Where a governmental body has custody of information relating to a 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 a pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

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 submitted 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 submitted information under section 552.108(a)(1) of the Government Code.³

In summary, the district may rely on Open Records Letter Nos. 2013-18904 and 2013-19875 as previous determinations and withhold the information that was previously submitted to and ruled on by this office accordance with those rulings. The district may withhold the submitted information under section 552.108(a)(1) of the Government Code.

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

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,

A handwritten signature in black ink that reads "Lindsay E. Hale". The signature is written in a cursive style with a large initial "L".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 506110

Enc. Submitted documents

c: Requestor
(w/o enclosures)