



ATTORNEY GENERAL OF TEXAS
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October 22, 2014

Mr. Ronn P. Garcia
Counsel for Lamesa Independent School District
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OR2014-19034

Dear Mr. Garcia:

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# 540386.

The Lamesa Independent School District (the "district"), which you represent, received a request for (1) images of all documents that were copied on a specified copier on a specified date, including the time at which the documents were copied; (2) images of all documents that were copied at a specified copier on specified dates; and (3) police logs and telephone records pertaining to a named district police officer since August 2013.¹ We understand the district has released some information to the requestor. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note some of the submitted information is not responsive to the instant request for information because it does not pertain to the named district police officer. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.

¹You note the district sought and received clarification of the request. See Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the 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 overbroad 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).

Section 552.108(b)(1) excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989). Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Ft. Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To demonstrate the applicability of this exception, a governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). In Open Records Decision No. 506, this office determined the statutory predecessor to section 552.108(b) excepted from disclosure "cellular mobile phone numbers assigned to county officials and employees with specific law enforcement responsibilities." Open Records Decision No. 506 at 2 (1988). We noted the purpose of the cellular telephones was to ensure immediate access to individuals with specific law enforcement responsibilities and that public access to these numbers could interfere with that purpose. *Id.*

You state the submitted information contains a cellular telephone number used by a district police officer in the field for law enforcement purposes, and release of this information would interfere with the law enforcement practices at the district. Based on your representation and our review, we conclude the district may withhold the cellular telephone number of the district officer at issue, a representative sample of which we have marked, under section 552.108(b)(1) of the Government Code. However, we conclude the district has not established the release of the remaining information would interfere with law enforcement or prosecution. Therefore, the district may not withhold any of the remaining information under section 552.108(b)(1) of the Government Code.

Section 552.108 of the Government Code also provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). A governmental body raising section 552.108 must reasonably explain the applicability of section 552.108. *See id.* § 552.301(e)(1)(A)

(governmental body must provide comments explaining why exceptions raised should apply to information requested). The protections offered by sections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) applies to information that pertains to particular pending criminal investigations or prosecutions, while section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudication. 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.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). A governmental body that claims section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See Gov't Code* §§ 552.108(a)(2), .301(e)(1)(A).

You generally state the remaining information “deals with the detection, investigation, and potentially, the prosecution of crimes in the school setting.” You also state “many of the phone numbers contained in [the information at issue] were utilized to investigate alleged criminal activity that did not result in [a] conviction or deferred adjudication.” However, you do not specify which phone numbers pertain to pending investigations under section 552.108(a)(1) and which, if any, pertain to closed cases that did not result in conviction or deferred adjudication under section 552.108(a)(2). Thus, you have failed to demonstrate the applicability of either section 552.108(a)(1) or section 552.108(a)(2) to the remaining information. Therefore, the district may not withhold any portion of the remaining information under section 552.108(a)(1) or (a)(2) of the Government Code.

We note the remaining information contains information subject to section 552.136 of the Government Code, which provides, “[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.”² *Id.* § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the district must withhold the information we have marked under section 552.136 of the Government Code.

In summary, the district may withhold the cellular telephone number of the district police officer at issue, a representative sample of which we have marked, under section 552.108(b)(1) of the Government Code. The district must withhold the information we have marked under section 552.136 of the Government Code. The district must release the remaining information.

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).*

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/dls

Ref: ID# 540386

Enc. Submitted documents

c: Requestor
(w/o enclosures)