



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 11, 2016

Ms. D'Ann Lacey Bey
Counsel for the Carroll Independent School District
Walsh Gallegos Treviño Russo & Kyle, P.C.
P.O. Box 168046
Irving, Texas 75016

OR2016-22684

Dear Ms. Bey:

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# 629832.

The Carroll Independent School District (the "district"), which you represent, received a request for information pertaining to a named individual.¹ You state you have 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 representative sample of information.²

Initially, you assert, and we agree, a portion of the submitted information, which you have marked, is not responsive to the instant request because the requestor excludes attorney-client communications from the scope of his request. This ruling does not address the public

¹We 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 when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

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.

availability of any information that is not responsive to the request and the district is not required to release that information in response to the request.

Next, we note the submitted information consists of information that is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). The submitted information includes information in an account, contract, or voucher relating to the receipt or expenditure of funds by the district that is subject to section 552.022(a)(3). The district asserts the information at issue, which we have marked, is excepted from release under section 552.108 of the Government Code. However, this section is discretionary and does not make information confidential under the Act. *See id.* § 552.007; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). Therefore, the district may not withhold the information at issue under section 552.108. However, we note portions of the information subject to section 552.022(a)(3) are subject to section 552.136 of the Government Code, which makes information confidential under the Act.³ Thus, we will address the applicability of section 552.136 to the information subject to section 552.022(a)(3) of the Government Code. We will also consider your argument under section 552.108 for the information not subject to section 552.022.

Section 552.108(a) 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: (1) 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 explain how and why the release of the information at issue 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, 710 (Tex. 1977).

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

We note section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). Additionally, section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 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 provides this office with a representation from the law enforcement agency that wishes to withhold the information. You state, and provide documentation from the Southlake Police Department (the “department”), stating the department objects to release of the information at issue because release would interfere with a pending criminal investigation. Thus, we conclude the release of the information at issue 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we find section 552.108(a)(1) is applicable to the remaining information. Accordingly, the district may withhold the information not subject to section 552.022(a)(3) under section 552.108(a)(1) on behalf of the department.

Section 552.136 of the Government Code states “[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.” Gov’t Code § 552.136(b); *see id.* § 552.136(a) (defining “access device”). Upon review, we find the district must withhold the account and routing numbers we have indicated in the information subject to section 552.022(a)(3) under section 552.136 of the Government Code.

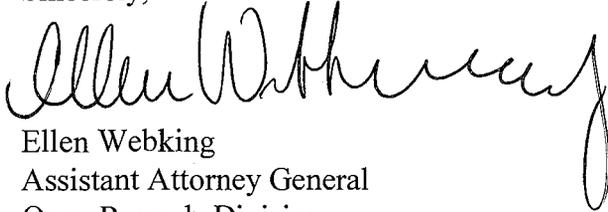
In summary, the district may withhold the information not subject to section 552.022(a)(3) of the Government Code under section 552.108(a)(1) of the Government Code on behalf of the department. The district must withhold the account and routing numbers we have indicated under section 552.136 of the Government Code. The district must release the remaining 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, appearing to read "Ellen Webking". The signature is fluid and cursive, with a large loop at the end of the last name.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/bw

Ref: ID# 629832

Enc. Submitted documents

c: Requestor
(w/o enclosures)