



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 24, 2016

Ms. Sierra D. Fisher
Counsel for Beaumont Independent School District
Karczewski Bradshaw L.L.P.
350 Pine Street, Suite 210
Beaumont, Texas 77701

OR2016-04426

Dear Ms. Fisher:

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# 599261.

The Beaumont Independent School District (the "district"), which you represent, received a request for information pertaining to a specified auditor's report. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we must address the district's procedural obligations under section 552.301 of the Government Code when requesting a decision from this office under the Act. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) written comments stating the reasons why the

¹Although you also raise section 552.116 of the Government Code, you make no arguments to support this exception. Therefore, we presume you have withdrawn your claim this exception applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

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.

stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e). In this instance, the district states it received the request for information on December 15, 2015. You inform us you were closed for business from December 21, 2015 through January 1, 2016. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body's deadlines under the Act. Accordingly, the district's fifteen-business-day deadline was January 19, 2016. We note the district submitted the requested information on January 19, 2016 in a format we are unable to view. The district must submit information in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Subsequently, in an envelope bearing a postmark date of February 5, 2016, the district submitted a copy of the specific information, as required under subsection 552.301(e), in a format this office is able to view. *See id.* § 552.308(a) (deadline under the Act is met if document bears post office mark indicating time within the deadline period). Consequently, we find the district failed to comply with section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). You claim sections 552.103 and 552.108 of the Government Code for the submitted information. However, these exceptions are discretionary in nature. They serve to protect a governmental body's interests and may be waived; as a result, they do not constitute compelling reasons to withhold information. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); *Dallas Area Rapid Transit v. Dallas 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 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 section 552.108 subject to waiver). Accordingly, the district may not withhold any portion of the submitted information under section 552.103 of the Government Code or section 552.108 of the Government Code based on the district's interests. However, the interests of a governmental body, other than the one that failed to comply with section 552.301, to withhold information under section 552.108 can provide a compelling

reason for non-disclosure under section 552.302. *See* Open Records Decision Nos. 586 at 2-3 (1991). You have provided a representation from the Jefferson County District Attorney's Office (the "district attorney's office") objecting to release of the submitted information under section 552.108. Thus, we will consider the applicability of section 552.108 on behalf of the district attorney's office.

Next, we note the submitted information contains agendas and the minutes of public meetings held by the district. The agendas and minutes of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act (the "OMA"), chapter 551 of the Government Code. *See* Gov't Code § 551.022 (minutes and tape recordings of open meeting are public records and shall be available for public inspection and copying on request to governmental body's chief administrative officer or officer's designee). Although the district attorney's office seeks to withhold this information under section 552.108 of the Government Code, as a general rule, the exceptions to disclosure found in the Act do not apply to information that other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, the district must release the agendas and meeting minutes, which we have marked, pursuant to the OMA.

Next, we note some of the remaining information 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;

...

(5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate; [and]

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(3), (5), (17). The remaining information includes information in an account, voucher, or contract relating to the receipt or expenditure of funds by the district

subject to section 552.022(a)(3), information used to estimate the need for or expenditure of public funds or taxes by a governmental body that is subject to subsection 552.022(a)(5), and court-filed documents subject to section 552.022(a)(17). The district must release this information, which we have marked and indicated, pursuant to sections 552.022(a)(3), 552.022(a)(5), and 552.022(a)(17) unless the information is made confidential under the Act or other law. *See id.* § 552.022(a)(3), (5), (17). Although the district attorney's office seeks to withhold this information under section 552.108 of the Government Code, as previously mentioned, section 552.108 is a discretionary exception to disclosure and does not make information confidential under the Act. *See* ORD 665 at 2 n.5. However, we note portions of the information subject to section 552.022(a)(3) are subject to section 552.136 of the Government Code and portions of the information subject to section 552.022(a)(17) may be subject to section 552.117 of the Government Code, which are mandatory exceptions that make information confidential under the Act.³ Thus, we will address the applicability of sections 552.117 and 552.136 to the information subject to section 552.022 of the Government Code.

Section 552.108(a)(1) 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 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). 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). The district informs us, and submits documentation showing, the remaining information relates to an active criminal investigation by the district attorney’s office, and the district attorney’s office objects to the release of the information. *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). Based on these representations and our review, we conclude section 552.108(a)(1) of the Government Code is applicable to the remaining information. Thus, with the exception of the public meeting minutes and agendas and information subject to section 552.022 of the Government Code, 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.

³The Office of the Attorney General will raise mandatory exceptions 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 some of the information subject to section 552.022(a)(17) may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. To the extent the information we have marked pertains to an employee who timely elected confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. To the extent the information we have marked does not pertain to an employee of the district, or the employee at issue did not timely request confidentiality under section 552.024, the district may not withhold the information we have marked under section 552.117(a)(1).

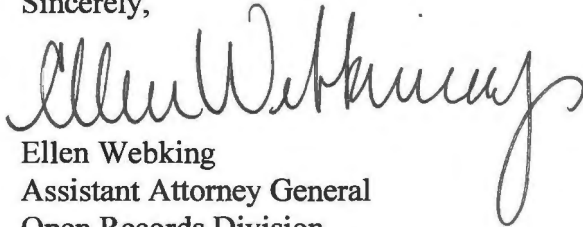
Section 552.136 of the Government Code provides, "[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136(b); *see id.* § 552.136(a) (defining "access device"). The information subject to section 552.022(a)(3) of the Government Code contains account numbers made confidential by section 552.136. Accordingly, the district must withhold the account numbers and routing numbers in the information at issue under section 552.136 of the Government Code.

In summary, with the exception of the open meeting minutes and agendas and the information subject to section 552.022 of the Government Code, which must be released, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. To the extent the information we have marked in the information subject to section 552.022(a)(17) pertains to an employee who timely elected confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the account numbers and routing numbers in the information subject to section 552.022(a)(3) 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 written in a cursive style with a long, sweeping tail on the final letter.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/akg

Ref: ID# 599261

Enc. Submitted documents

c: Requestor
(w/o enclosures)