



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 2, 2016

Mr. Miguel Salinas  
Staff Attorney  
Brownsville Independent School District  
1900 East Price Road  
Brownsville, Texas 78521-2417

OR2016-24457

Dear Mr. Salinas:

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# 632742.

The Brownsville Independent School District (the "district") received a request for any communications between the district and Valco Foods LLC ("Valco") or the Region One Education Service Center ("Region One") during a specified time period. 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.

Initially, we note most of the submitted information is not responsive to the instant request for information because it does not consist of communications sent from or received by Valco or Region One or it was created after the request was received. This ruling does not address the public availability of any information that is not responsive to the request.

Next, we note some of the responsive information may have been the subject of previous requests for information, as a result of which this office issued Open Records Letter Nos. 2016-09649 (2016) and 2016-09966 (2016). In those rulings we determined, with the exception of information subject to section 552.022(a)(3) of the Government Code, the district may withhold the information at issue under section 552.108(a)(1) of the Government Code. We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, to the extent the responsive information is identical to the

information previously requested and ruled upon, the district must continue to rely on Open Records Letter Nos. 2016-09649 and 2016-09966 as previous determinations and withhold or release the identical information at issue in 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 a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). However, to the extent the responsive information is not subject to the previous rulings, we will consider your arguments against disclosure of the information at issue.

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

(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 responsive information contains purchase orders and contracts subject to section 552.022(a)(3) of the Government Code. This information must be released unless it is made confidential under the Act or other law. *See id.* You seek to withhold the information at issue under section 552.108 of the Government Code. However, section 552.108 is discretionary in nature and does not make information confidential under the Act. *See* 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 subject to section 552.022(a)(3), which we have indicated, under section 552.108 of the Government Code. However, because section 552.136 of the Government Code makes information confidential under the Act, we will consider the applicability of section 552.136 for the information at issue.<sup>1</sup> We will also consider your argument under section 552.108 for the information not subject to section 552.022.

---

<sup>1</sup>The 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).

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 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). You state the submitted information pertains to an active criminal investigation with the district’s police department. Based on your representation, 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 (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). Thus, section 552.108(a)(1) is applicable to the remaining responsive information. Thus, with the exception of the information subject to section 552.022(a)(3) of the Government Code, the district may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code.

Section 552.136 of the Government Code provides, “Notwithstanding 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”). Accordingly, the district must withhold the information we have marked under section 552.136 of the Government Code.

In summary, to the extent the responsive information is identical to the information previously requested and ruled upon, the district must continue to rely on Open Records Letter Nos. 2016-09649 and 2016-09966 as previous determinations and withhold or release the identical information at issue in accordance with those rulings. With the exception of the information subject to section 552.022(a)(3) of the Government Code, which we have indicated, the district may withhold the remaining responsive information under section 552.108(a)(1) of the Government Code. The district must withhold the information we have marked under section 552.136 of the Government Code, and release the remaining responsive information subject to section 552.022(a)(3) 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](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 "Tim Neal".

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/bhf

Ref: ID# 632742

Enc. Submitted documents

c: Requestor  
(w/o enclosures)