



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 30, 2016

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

OR2016-26511

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# 635967 (BISD# 8167).

The Brownsville Independent School District (the "district") received a request for any communications between the district and the Texas Department of Agriculture or the United States Department of Agriculture for a specified time period relating or referring to Valco Foods L.L.C. 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 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. 2016-24457 (2016), 2016-09966 (2016), and 2016-09649 (2016). In those rulings we determined, with the exception of information subject to section 552.136 of the Government Code, the district must release information subject to section 552.022(a)(3) of the Government Code and may withhold the remaining 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 may continue to rely on Open Records Letter Nos. 2016-24457, 2016-09966, and 2016-09649 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 the remaining information includes minutes, agendas, and notices of public meetings. The minutes, agendas, and notices of a governmental body's public meetings are specifically made public under provisions of the Open Meetings Act, 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), .041 (governmental body shall give written notice of date, hour, place, and subject of each meeting), .043 (notice of meeting of governmental body must be posted in place readily accessible to general public for at least 72 hours before scheduled time of meeting). The exceptions to disclosure found in the Act, including section 552.108, 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 submitted minutes, agendas, and notices of public meetings pursuant to sections 551.022, 551.041, and 551.043 of the Government Code.

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:

(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). Portions of the remaining information consist of invoices relating to the expenditure of public funds 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 a discretionary exception 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 remaining information subject to section 552.022(a)(3), a representative sample of which we have marked, under section 552.108. However, we will consider your argument under section 552.108 for the information not subject to section 552.022(a)(3).

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: (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). You state, and provide documentation showing, the remaining information not subject to section 552.022(a)(3) of the Government Code relates to a criminal investigation that is pending with the district's police department. Based on this representation and our review, we conclude the release of the remaining 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, 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, section 552.108(a)(1) is applicable to the information at issue. Accordingly, the district may withhold the remaining information not subject to section 552.022(a)(3) of the Government Code under section 552.108(a)(1).

In summary, to the extent the responsive information is identical to the information previously requested and ruled upon, the district may continue to rely on Open Records Letter Nos. 2016-24457, 2016-09966, and 2016-09649 as previous determinations and withhold or release the identical information at issue in accordance with those rulings. The district must release the submitted minutes, notices, and agendas of public meetings pursuant to sections 551.022, 551.041, and 551.043 of the Government Code. The district must release the remaining information subject to section 552.022(a)(3), a representative sample of which we have marked. The district may withhold the remaining information under section 552.108(a)(1).

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 "Ramsey Abarca", with a long horizontal flourish extending to the right.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/bw

Ref: ID# 635967

Enc. Submitted documents

c: Requestor
(w/o enclosures)