



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 7, 2017

Mr. Miguel Salinas
Staff Attorney
Brownsville Independent School District
1900 Price Road, Suite 302
Brownsville, Texas 78521-2417

OR2017-04822

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# 648447 (Brownsville ISD Nos. 3449, 08235, 08236).

The Brownsville Independent School District (the "district") received three requests from two requestors for specified purchase orders.¹ 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 requested information may have been the subject of a previous ruling from this office. In Open Records Letter No. 2016-12419 (2016), this office ruled except for the information subject to section 552.022(a)(3) 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 and must withhold the account and routing numbers we marked in the information subject to section 552.022(a)(3) under section 552.136 of the Government Code. We have no indication the law, facts, or

¹We note the district sought and received clarification of the information requested for the first request. See Gov't Code § 552.222(b) (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 that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad 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).

circumstances upon which the prior ruling was based have changed. Accordingly, to the extent the requested information is identical to the information previously requested and ruled upon, the district must continue to rely on Open Records Letter No. 2016-12419 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. *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 information in the current request is not encompassed by the prior ruling, we will consider the exception you raise.

Next, we note some of the submitted 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 submitted 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. 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* 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) under section 552.108. However, we note some of this information is subject to section 552.136 of the Government Code, which can make information confidential under the Act.² Therefore, we will consider the applicability of section 552.136 to the information subject to section 552.022. Furthermore, we will also consider your argument under section 552.108 for the information not subject to section 552.022(a)(3).

²The 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 552.136(b) 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”). Upon review, we find the district must withhold account numbers and routing numbers in the information subject to section 552.022 of the Government Code under section 552.136 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 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 submitted information not subject to section 552.022(a)(3) of the Government Code relates to a pending criminal investigation with the district’s police department. Based on this representation and our review, 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). Accordingly, 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.

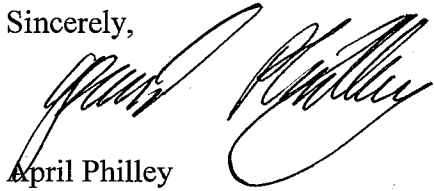
In summary, to the extent the submitted information is identical to the information previously requested and ruled upon, the district must continue to rely on Open Records Letter No. 2016-12419 as a previous determination, and withhold or release the previously ruled upon information in accordance with it. The district must withhold account numbers and routing numbers in the information subject to section 552.022(a)(3) of the Government Code under section 552.136 of the Government Code. 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. 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 'April Philley', written in a cursive style.

April Philley
Assistant Attorney General
Open Records Division

AP/sb

Ref: ID# 648447

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)