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ATTORNEY GENERAL OF TEXAS

December 12, 2017

Ms. Ann Manning
Counsel for the Lubbock Independent School District
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P.O. Box 16197
Lubbock, Texas 79490

OR2017-28186

Dear Ms. Manning:

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# 687495.

The Lubbock Independent School District (the "district"), which you represent, received a request for nine categories of information relating to a named former district police department (the "department") officer, specified complaints and investigations, and department policies and procedures. You state the district does not have information responsive to portions of the request.¹ You further state the district has 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

Section 552.108 of the Government Code provides, in relevant part:

¹The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 that those records contain substantially different types of information than that submitted to this office.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

...

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming section 552.108(a)(2) or section 552.108(b)(2) must demonstrate the information at issue relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). However, section 552.108 is generally not applicable to records of an investigation that is purely administrative in nature and does not involve the criminal investigation or prosecution of alleged misconduct. *See, e.g., Morales v. Ellen*, 840 S.W.2d 519, 526 (Tex. 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); Open Records Decision No. 350 at 3-4 (1982). You state the submitted information consists of suggestions for improvements within the department produced as part of a closed investigation conducted by the Texas Department of Public Safety. Upon review, we find the submitted information is purely administrative in nature. As a result, we find you have failed to demonstrate the applicability of sections 552.108(a)(2) and 552.108(b)(2) to the information at issue. Accordingly, the district may not withhold the submitted information under section 552.108(a)(2) or section 552.108(b)(2) of the Government Code.

We note some of the submitted information may be subject to section 552.1175 of the Government Code.³ Section 552.1175 of the Government Code protects the home address, home telephone number, emergency contact information, date of birth, social security number, and family member information of certain individuals, when that information is held by a governmental body in a non-employment capacity and the individual elects to keep the information confidential. Gov't Code § 552.1175(b). Section 552.1175 applies, in part, to "peace officers as defined by Article 2.12, Code of Criminal Procedure[.]" *Id.* § 552.1175(a)(1). We note section 552.1175 also encompasses a personal cellular telephone number, provided a governmental body does not pay for the cellular phone service. *See* Open Records Decision No. 506 at 5-7 (1988). Upon review, we find the submitted information contains a cellular telephone number that may be subject to section 552.1175. Accordingly, to the extent the telephone number we have marked consists of the cellular telephone number belonging to an individual who is a currently-licensed peace officer and who elects to restrict access to this information in accordance with section 552.1175(b), the district must withhold the information we have marked under section 552.1175 of the Government Code; however, the marked information may only be withheld if a governmental body does not pay for the cellular telephone service. As you raise no further exceptions to disclosure, 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,



Tim Neal
Assistant Attorney General
Open Records Division

TN/tdw

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).

Ref: ID# 687495

Enc. Submitted documents

c: Requestor
(w/o enclosures)