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ATTORNEY GENERAL OF TEXAS

September 9, 2019

Mr. Guillermo Garcia
Counsel for the Laredo Independent School District
Kazen, Meurer & Pérez, L.L.P.
211 Calle del Norte, Suite 100
Laredo, Texas 78041

OR2019-25154

Dear Mr. Garcia

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# 782050.

The Laredo Independent School District (the "district"), which you represent, received a request for specified audio and video recordings and information pertaining to specified complaints and investigations.¹ You state the district does not maintain some of the requested information.² You also state the district has released some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.103, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing

¹ We note we asked the district to provide additional information pursuant to section 552.303 of the Government Code. *See* Gov't Code § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the correspondence sent by the district pursuant to that request.

² The 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).

that interested party may submit written comments regarding why information should or should not be released).

Initially, you state some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2019-08279 (2019). In that ruling we determined, with the exception of basic information, which must be released, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code. We understand the law, facts, or circumstances on which the prior ruling was based have not changed. Thus, the district may continue to rely on Open Records Letter No. 2019-08279 as a previous determination and withhold or release the information at issue in accordance with that ruling. *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, we will consider your arguments for the submitted information, which is not subject to the previous ruling.

Next, we note 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:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation that is subject to subsection 552.022(a)(1). The district must release the submitted information pursuant to subsection 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. Although you raise section 552.103 of the Government Code for the submitted information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See 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 Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, none of the information subject to subsection 552.022(a)(1) may be withheld under section 552.103. However, we will consider your argument to withhold this information under section 552.108 of the Government Code. *See* Gov't Code § 552.022(a)(1). Further, because section 552.135 of the Government Code makes information confidential under the Act, we will consider the applicability of this section to the information at issue.

Section 552.108(a) 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). Generally, 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 remaining information should be withheld as “release of the information would interfere with detection, investigation, or prosecution of crime.” You do not inform us the submitted information pertains to a specific ongoing criminal investigation or prosecution, nor have you explained how its release would interfere in some way with the detection, investigation, or prosecution of crime. Thus, the district has failed to demonstrate the applicability of section 552.108(a)(1) of the Government Code to the submitted information and the district may not withhold any of it on that basis.

Section 552.135 of the Government Code provides, in relevant part:

(a) “Informer” means a student or a former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student’s or former student’s name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee’s or former employee’s name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov’t Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of “law,” a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). You state the submitted information identifies a district employee who reported a possible violation of criminal law. Upon review, we find the district must withhold the information we have marked under section 552.135 of the Government Code. However, the district has not demonstrated any of the remaining

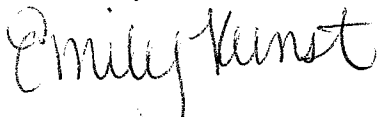
information at issue reveals the identity of an informer for the purposes of section 552.135 of the Government Code. Therefore, the district may not withhold any of the remaining information on that ground.

In summary, the district may continue to rely on Open Records Letter No. 2019-08273 as a previous determination and withhold or release the information at issue in accordance with that ruling. The district must withhold the information we marked under section 552.135 of the Government Code. The district must release the remaining information.³

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/be

Ref: ID# 782050

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(b)(a governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the district must again seek a decision from this office if it receives another request for the same information from another requestor.