



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 25, 2019

Ms. Sandy Slade  
Public Information Officer  
Leander Independent School District  
P.O. Box 218  
Leander, Texas 78646

OR2019-30231

Dear Ms. Slade:

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# 792048 (PIR# 2702).

The Leander Independent School District (the "district") received a request for e-mails of a named individual for a specified period of time.<sup>1</sup> The district states it has released some information. The district also states it is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>2</sup> The district claims the submitted information is excepted from disclosure

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<sup>1</sup> The district states it sought clarification of one of the categories of information requested. *See* Gov't Code § 552.222 (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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

<sup>2</sup> The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

under sections 552.101, 552.107, and 552.108 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 37.108 of the Education Code. Section 37.108 provides, in part:

(b) At least once every three years, each school district or public junior college district shall conduct a safety and security audit of the district’s facilities. To the extent possible, a district shall follow safety and security audit procedures developed by the Texas School Safety Center or a person included in the registry established by the Texas School Safety Center under Section 37.2091.

...

(c-1) Except as provided by Subsection (c-2), any document or information collected, developed, or produced during a safety and security audit conducted under Subsection (b) is not subject to disclosure under [the Act].

Act of May 27, 2019, 86th Leg., R.S., S.B. 11, § 10 (to be codified at Educ. Code § 37.108); Educ. Code § 37.108 (c-1). You assert some of the submitted information is confidential under section 37.108(c-1). *See id.* § 37.108(b). We understand the information you indicated was developed, collected, or produced as a result of a safety and security audit under section 37.108(b). We understand none of the exceptions in subsection (c-2) are applicable to the information at issue. *See id.* § 37.108(c-2) (listing types of documents relating to district’s multihazard emergency operations plan that are subject to disclosure). Based on your representations and our review, we conclude the district must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code.<sup>4</sup>

The district raises section 552.101 of the Government Code in conjunction with sections 551.074, 551.076, and 551.089 of the Government Code. Section 551.074 allows a governmental body to conduct certain deliberations about employees in an executive session. *See Gov’t Code* § 551.074. Section 551.076 provides that a governmental body is not required to conduct an open meeting to deliberate the deployment or implementation of security personnel or devices. *Id.* § 551.076. Section 551.089 allows a governmental body to conduct certain deliberations regarding security devise or security audits in a closed meeting. *See id.* § 551.082. However, these provisions do not make information confidential for purposes of section 552.101 of the Government Code. *See Open Records Decision* 478 (1987). Thus, the district may not withhold any of the requested information

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<sup>3</sup> Although you raise section 552.022 of the Government Code, this section is not an exception to disclosure under the Act. *See Gov’t Code* § 552.022 (enumerating categories of information not to be excepted from disclosure unless made confidential under Act or other law).

<sup>4</sup> As our ruling for this information is dispositive, we need not address your remaining arguments against its disclosure.

under section 552.101 in conjunction with section 551.074, section 551.076, or section 551.089 of the Government Code.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See* Gov't Code § 552.107(1). When asserting the attorney-client privilege, a governmental body has the burden of providing the necessary facts to demonstrate the elements of the privilege in order to withhold the information at issue. Open Records Decision No. 676 at 6-7 (2002). First, a governmental body must demonstrate that the information constitutes or documents a communication. *Id.* at 7. Second, the communication must have been made "to facilitate the rendition of professional legal services" to the client governmental body. TEX. R. EVID. 503(b)(1). The privilege does not apply when an attorney or representative is involved in some capacity other than that of providing or facilitating professional legal services to the client governmental body. *In re Tex. Farmers Ins. Exch.*, 990 S.W.2d 337, 340 (Tex. App.—Texarkana 1999, orig. proceeding) (attorney-client privilege does not apply if attorney acting in a capacity other than that of attorney). Governmental attorneys often act in capacities other than that of professional legal counsel, such as administrators, investigators, or managers. Thus, the mere fact that a communication involves an attorney for the government does not demonstrate this element. Third, the privilege applies only to communications between or among clients, client representatives, lawyers, and lawyer representatives. TEX. R. EVID. 503(b)(1). Thus, a governmental body must inform this office of the identities and capacities of the individuals to whom each communication at issue has been made. Lastly, the attorney-client privilege applies only to a *confidential* communication, *id.*, meaning it was "not intended to be disclosed to third persons other than those: (A) to whom disclosure is made to further the rendition of professional legal services to the client; or (B) reasonably necessary to transmit the communication." *Id.* 503(a)(5). Whether a communication meets this definition depends on the *intent* of the parties involved at the time the information was communicated. *Osborne v. Johnson*, 954 S.W.2d 180, 184 (Tex. App.—Waco 1997, orig. proceeding). Moreover, because the client may elect to waive the privilege at any time, a governmental body must explain that the confidentiality of a communication has been maintained. Section 552.107(1) generally excepts an entire communication that is demonstrated to be protected by the attorney-client privilege unless otherwise waived by the governmental body. *See Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein).

The district states the information it has indicated consists of communications involving attorneys for the district and district employees and officials in their capacities as clients. The district states these communications were made in furtherance of the rendition of professional legal services to the district. The district states these communications were intended to be, and have remained, confidential. Based on these representations and our review, we find the district has demonstrated the applicability of the attorney-client privilege to the information at issue. Accordingly, the district may withhold the information you indicated under section 552.107(1) of the Government Code.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706

(Tex. 1977)). A governmental body claiming section 552.108(b)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). This office has concluded section 552.108(b)(1) excepts from public disclosure information relating to the security or operation of a law enforcement agency. *See, e.g.*, Open Records Decision Nos. 531 (release of detailed use of force guidelines would unduly interfere with law enforcement), 252 (1980) (section 552.108 of the Government Code is designed to protect investigative techniques and procedures used in law enforcement), 143 (1976) (disclosure of specific operations or specialized equipment directly related to investigation or detection of crime may be excepted). Section 552.108(b)(1) is not applicable, however, to generally known policies and procedures. *See, e.g.*, ORDs. 531 at 2–3 (Penal Code provisions, common law rules, and constitutional limitations on use of force not protected), 252 at 3 (governmental body failed to indicate why investigative procedures and techniques requested were any different from those commonly known).

The district states portions of the remaining information, if released, would interfere with law enforcement or prosecution of crime. You state the information at issue consists of investigative information and other law enforcement sensitive information shared among multiple law enforcement agencies to enhance safety and security for the district. You argue release of the information at issue would hamper the ability of the district and law enforcement agencies to detect public safety threats, respond timely to incidents involving the district, and assist the district with ongoing investigations. Based upon your representations, we agree the information you indicated would interfere with law enforcement. Accordingly, the district may withhold the information you indicated under section 552.108(b)(1) of the Government Code.<sup>5</sup>

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code.<sup>6</sup> *See* Gov't Code § 552.117(a)(1). Section 552.117(a)(1) also applies to the personal cellular telephone number of a current or former official or employee of a governmental body, provided the cellular telephone service is not paid by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only

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<sup>5</sup> As our ruling is dipositive, we need not address your remaining argument against disclosure for this information.

<sup>6</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).

on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, the district must withhold any personal cellular telephone numbers of district employees in the remaining information under section 552.117(a)(1) if the employees at issue made timely elections under section 552.024 and if the cellular telephone service was not paid for by a governmental body.

In summary, the district must withhold the information you indicated under section 552.101 of the Government Code in conjunction with section 37.108(c-1) of the Education Code. The district may withhold the information you indicated under section 552.107(1) of the Government Code and under section 552.108(b)(1) of the Government Code. The district must withhold any personal cellular telephone numbers of district employees in the remaining information under section 552.117(a)(1) if the employees at issue made timely elections under section 552.024 and if the cellular telephone service was not paid for by a governmental body. The remaining information must be released.

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,



Paige Lay  
Assistant Attorney General  
Open Records Division

PL/rm

Ref: ID# 792048

Enc. Submitted documents

c: Requestor