



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 21, 2020

Ms. Haley Turner
Counsel for Bay City Independent School District
Walsh, Gallegos, Treviño, Russo & Kyle, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2020-01845

Dear Ms. Turner:

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# 807070.

The Bay City Independent School District (the "district"), which you represent, received a request for information pertaining to a specified investigation involving a named individual. You claim the submitted information is either not subject to the Act or, alternatively, excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you assert the submitted information is not subject to the Act. Section 552.002(a) of the Government Code defines "public information" as information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or
 - (C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information;or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

Gov't Code § 552.002(a). Thus, virtually all of the information in a governmental body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1); *see* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). Information is "in connection with the transaction of official business" if the information is created by, transmitted to, received by, or maintained by a person or entity performing official business or a government function on behalf of a governmental body and the information pertains to official business of the governmental body. *See* Gov't Code § 552.002(a-1). Moreover, section 552.001 of the Act provides that it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. *See id.* § 552.001(a). You assert the submitted information is "not subject to disclosure, pursuant to . . . section 552.002 [of the Government Code.]" Upon review, we find the submitted information consists of information that was created and is maintained by the district for the transaction of official business. Accordingly, the submitted information is subject to the Act and must be released, unless the information falls within an exception to public disclosure under the Act.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See id.* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information 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). We note section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature and does not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519 (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); *see also* Open Records Decision No. 350 at 3-4 (1982). You state the submitted information relates to a closed criminal investigation that did not result in conviction or deferred adjudication. However, we note the information at issue pertains solely to an internal investigation into a district police officer conducted by the district's police department and is not information that deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. Therefore, we conclude you have failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue, and the district may not withhold any portion of the submitted information on that basis.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024

and 552.1175 of the Government Code.¹ *See* Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. We note section 552.117 also encompasses a personal cellular telephone number, unless the cellular service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). In this instance we are unable to determine whether the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12; therefore, we must rule conditionally. Accordingly, if the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12, then the district must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the district may only withhold the marked cellular telephone number if the cellular telephone service was not paid for by a governmental body. Conversely, if the individuals at issue are not currently licensed peace officers as defined by article 2.12, then the district may not withhold the information at issue under section 552.117(a)(2).

However, if the individuals at issue are not currently-licensed peace officers as defined by article 2.12, then the information at issue may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) 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 of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See* Gov't Code § 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, "A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number." *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. As noted above, section 552.117 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* ORD 506 at 5-6. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, then the district must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the district may only withhold the marked cellular telephone number if the cellular telephone service was not paid for by a governmental body. Conversely, if the employees at issue did not timely request

¹ 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).

confidentiality under section 552.024, then the district may not withhold the information at issue under section 552.117(a)(1).

In summary, if the individuals whose information is at issue are currently-licensed peace officers as defined by article 2.12 of the Code of Criminal Procedure, then the district must withhold the information we marked under section 552.117(a)(2) of the Government Code; however, the district may only withhold the marked cellular telephone number if the cellular telephone service was not paid for by a governmental body. If the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code, then the district must withhold the information we marked under section 552.117(a)(1) of the Government Code; however, the district may only withhold the marked cellular telephone number if the cellular telephone service was not paid for by a governmental body. The district must release the remaining information.²

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,



Blake Brennan
Assistant Attorney General
Open Records Division

BBX/rm

² We note the information being released contains a social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b). However, we note the requestor has a right of access to his own social security number, and the district may not withhold it from him under section 552.147 of the Government Code. *See generally id.* § 552.023(b). We also note the requestor has a right of access to certain information pertaining to himself which is normally excepted from disclosure under section 552.130 of the Government Code. *See id.* § 552.023(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); ORD 481 at 4 (privacy theories not implicated when individuals request information concerning themselves). To the extent the district receives another request for this information from an individual without such a right of access, we note section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c).

Ref: ID# 807070

Enc. Submitted documents

c: Requestor
(w/o enclosures)