



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 26, 2022

Ms. Kacey Villafuerte
Counsel for the Uvalde Consolidated Independent School District
Walsh, Gallegos, Trevino, Kyle & Robinson, P.C.
P.O. Box 532146
Harlingen, Texas 78553-2146

OR2022-29682

Dear Ms. Villafuerte:

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# 971583 (PIA Nos. 0054 and 0080).

The Uvalde Consolidated Independent School District (the “district”), which you represent, received two requests from different requestors for communications between the district and Social Sentinel or its parent company Navigate 360.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Initially, we note some of the submitted information, which we have indicated, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2022-29145 (2022). In Open Records Letter No. 2022-29145, we determined the district may withhold the information at issue under section 552.108 of the Government Code on behalf of the Texas Department of Public Safety (“DPS”). We have

¹ We note the district sought and received clarification of the information requested in both requests. *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 when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

² We 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 those records contain substantially different types of information than that submitted to this office.

no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the district may continue to rely on Open Records Letter No. 2022-29145 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the district's arguments against release of the submitted information that is not encompassed by Open Records Letter No. 2022-29145.

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] release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 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). Section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 414 at 4-5 (1987). Where a governmental body has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You state, and provide documentation demonstrating, the Texas Department of Public Safety (“DPS”) objects to release of the remaining information because it relates to its ongoing criminal investigation. Based on DPS’s representation and our review, we conclude the release of the remaining information 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 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of DPS.³ We note section 552.108 is discretionary in nature 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). Thus, the district has the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

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->

³ As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

[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,

Kelly McWethy
Assistant Attorney General
Open Records Division

KM/mo

Ref: ID# 971583

c: Requestor