



SPALDING NICHOLS
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December 13, 2023

Via Public Information Act Electronic Filing System

Honorable Ken Paxton
Attorney General of Texas
Capital Station
Post Office Box 12548
Austin, Texas 78711-2548
Attention: Open Records Division

Re: Public Information Act Request—Spring Branch Independent School District [SNLL No. 23-275]

Dear Attorney General Paxton:

Pursuant to Section 552.301 of the Public Information Act, Spring Branch Independent School District (SBISD or the District) requests your opinion concerning whether it is required to disclose certain documents responsive to a written request for information.

By correspondence dated December 11, 2023, on behalf of SBISD, I requested your decision that information sought through the MuckRock Foundation by an anonymous requestor (requestor) is excepted from disclosure. This letter submits additional comments and forwards specific information for your review and confirmation that the information is excepted from disclosure.

1. The Request for Information.

By email correspondence sent after business hours on Friday, November 24, 2023, and received by the District on Monday, November 27, 2023, an anonymous requestor submitted an open records request to SBISD through the MuckRock Foundation. Specifically, the requestor requested:

All contracts, licenses, MOUs, MOAs, data agreements, letters of intent, State of Work documents, Scope of Work documents, and other agreement documents with Flock Safety.

The request is attached as **Exhibit 1**, and this firm internally identifies this request as No. 23-275.

This request for an open records decision is submitted timely, given that SBISD has ten (10) business days from receipt of the requestor's request to response and fifteen (15) business days to submit its briefing and documentation for review. The request was sent via email after business hours on Friday, November 24, 2023, and was received by the district on Monday, November 27, 2023. *See* Exh.1. Accordingly, the deadline for the District to request an open records decision is Monday, December 11, 2023, and the deadline for the District to submit its briefing and documents for review is Monday, December 18, 2023.

SBISD claims all exceptions under the TPIA including, but not limited to, the following:

- (1) Tex. Gov't Code § 552.101;
- (2) Tex. Gov't Code § 552.108; and
- (3) Tex. Gov't Code § 552.110.

SBISD is submitting to your office, with a redacted copy to the requestor, its written comments stating the reasons why the stated exceptions may apply, a copy of the information requested, and other information as required by Section 552.301 of the Texas Government Code.

2. Section 552.101: Confidential 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. This exception encompasses information other statutes make confidential. The District claims section 552.101 in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the HSA). Section 418.182 provides in part:

- (a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See* ORD No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls



within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The information contained in Exhibit 2 is confidential under section 418.182 of the Government Code. *See* Responsive Information, attached as **Exhibit 2**. Release of the information in Exhibit 2 would

Accordingly, SBISD asserts that the information contained in Exhibit 2 is confidential under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.

3. Section 552.108(b)(1).

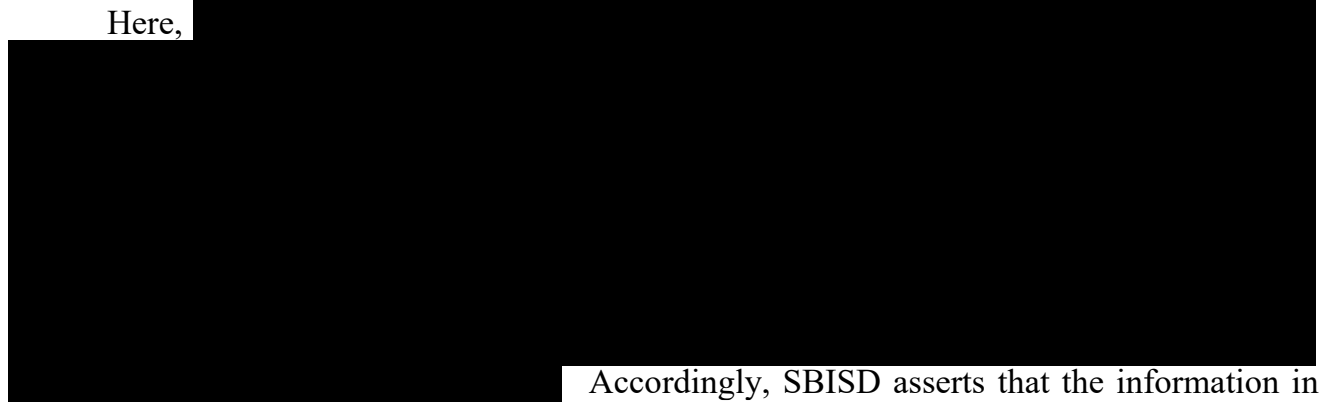
Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. *See id.* § 552.108(b)(1); *see also* ORD No. 531 at 2 (1989) (quoting *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)). 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.).

To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* ORD No. 562 at 10 (1990) (construing statutory predecessor). 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.,* ORD 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).

Here,



Accordingly, SBISD asserts that the information in Exhibit 2 is confidential under Section 552.108(b)(1) of the Texas Government Code.

4. Third Party's Interests.

SBISD asserts that the release of some of the requested information may implicate the interests of third parties pursuant to Texas Government Code Section § 552.110. Specifically, the vendor's proposal terms and project cost information and other potentially confidential information. Therefore, some of the documents responsive to the requestor's request may contain confidential proprietary information of a third party. Copies of the responsive documents are enclosed. *See* Exh. 2.

Pursuant to Texas Government Code Sections 552.110 and 552.305, SBISD has notified the third party of the request for information and of the third party's right to submit arguments stating why the information should not be released. *See* Tex. Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances); *see* Letter to Third Party Vendor, attached as **Exhibit 3**.

Pursuant to Tex. Gov't Code §§ 552.301(d) and 552.305, SBISD has provided the requestor with a copy of this request.

Should you require any additional information from SBISD, please do not hesitate to contact me.



Very truly yours,

SPALDING NICHOLS LAMP LANGLOIS

/s/ Elizabeth M. Rice

ELIZABETH M. RICE

Enclosures: **Exhibit 1**—TPIA Request
Exhibit 2—Responsive Information
Exhibit 3—Letter to Third Party Vendor

cc: Requestor (via email pdf, redacted, w/o enclosures)
Third Party Vendor (via email pdf, w/o enclosures)

