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May 16, 2024

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. 24-247]

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 May 9, 2024, 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 Wednesday, April 24, 2024, and received by the District on Thursday, April 25, 2024, an anonymous requestor submitted an open records request to Spring Branch ISD through the MuckRock Foundation. Specifically, the requestor requested:

. . . records related to the side-by-side comparison of Flock Safety's Raven product the other vendor's devices discussed on the website linked above:

1. Documents sufficient to show all meeting minutes, reports, slide decks, presentations, and work products related to the side-by-side comparison.

2. Documents sufficient to show all planning documents prepared before conducting the side-by-side comparison.
3. A copy of all data collected during the duration of the side-by-side comparison.
4. Documents sufficient to show all Spring Branch ISD and Flock Safety personnel who participated in planning, conducting, and analyzing the side-by-side comparison.

The request is attached as **Exhibit 1**, and this firm internally identifies this request as No. 24-247.

This request for an open records decision is submitted timely, given that Spring Branch ISD has ten (10) business days from receipt of the requestor's request to initially respond and fifteen (15) business days to submit its briefing and documentation for review. The request was sent via email after business hours on Wednesday, April 24, 2024, and received by the District on Thursday, April 25, 2024. *See* Exh. 1. Therefore, the deadline for the District to request an open records decision was Thursday, May 9, 2024, and the deadline for the District to submit its briefing and documents for review is Thursday, May 16, 2024.

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

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

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.

a. The District's Emergency Operation Plan pursuant to Section 37.108 of the Texas Education Code.

The Texas Government Code excepts confidential information from public disclosure. Specifically, Section 552.101 excepts "information that is considered to be confidential by law, either constitutional, statutory or by judicial decision." This section encompasses information protected by other statutes, which includes Section 37.108 of the Texas Education Code. This provision requires that each school district adopt and implement a "multi-hazard emergency operations plan for use in the district's facilities."



The emergency operations plan (EOP) must address prevention, mitigation, preparedness, response, and recovery as defined by the Texas School Safety Center in conjunction with the governor's office of homeland security and the commissioner of education or commissioner of higher education, as applicable. The plan must provide for the following:

- (1) Training in responding to an emergency for district employees, including substitute teachers;
- (2) Measures to ensure district employees, including substitute teachers, have classroom access to a telephone, including a cellular telephone, or another electronic communication device allowing for immediate contact with district emergency services or emergency services agencies, law enforcement agencies, health departments, and fire departments;
- (3) Measures to ensure district communications technology and infrastructure are adequate to allow for communication during an emergency;
- (4) If the plan applies to a school district, mandatory school drills and exercises, including drills required under Section 37.114, to prepare district students and employees for responding to an emergency;
- (5) Measures to ensure coordination with the Department of State Health Services and local emergency management agencies, law enforcement, health departments, and fire departments in the event of an emergency; and
- (6) The implementation of a safety and security audit as required by Subsection (b).

Tex. Edu. Code § 37.108(a)(1)-(6).

SBISD contracted with [REDACTED]

[REDACTED] Moreover Section 37.108(c) specifies that "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 Chapter 552 of the Government Code." (emphasis added).



Subsection (c-2) states that an emergency operations plan is subject to disclosure if the document enables a person to:

- (1) verify that the district has established a plan and determine the agencies involved in the development of the plan and the agencies coordinating with the district to respond to an emergency, including the Department of State Health Services, local emergency services agencies, law enforcement agencies, health departments, and fire departments;
- (2) verify that the district's plan was reviewed within the last 12 months and determine the specific review dates;
- (3) verify that the plan addresses the five phases of emergency management under Subsection (a);
- (4) verify that district employees have been trained to respond to an emergency and determine the types of training, the number of employees trained, and the person conducting the training;
- (5) verify that each campus in the district has conducted mandatory emergency drills and exercises in accordance with the plan and determine the frequency of the drills;
- (6) if the district is a school district, verify that the district has established a plan for responding to a train derailment if required under Subsection (d);
- (7) verify that the district has completed a safety and security audit under Subsection (b) and determine the date the audit was conducted, the person conducting the audit, and the date the district presented the results of the audit to the district's board of trustees;
- (8) verify that the district has addressed any recommendations by the district's board of trustees for improvement of the plan and determine the district's progress within the last 12 months; and
- (9) if the district is a school district, verify that the district has established a visitor policy and identify the provisions governing access to a district building or other district property.



Tex. Edu. Code § 37.108(c-2)(1)-(9).

SBISD contends that subsection 37.108(c-2) is not applicable here. The responsive information, attached as Exhibit 2, contains [REDACTED]

[REDACTED] Therefore, the District seeks your decision that the information in Exhibit 2 is considered confidential under Section 552.101 in conjunction with Section 37.108 of the Education Code.

b. The Texas Homeland Security Act.

Additionally, or alternatively, the responsive information is excepted from disclosure under Section 552.101 of the Texas Government Code in conjunction with provisions of the Texas Homeland Security Act (HSA), Chapter 418 of the Texas Government Code. Section 418.182 of the HSA provides that the following information is confidential and not subject to release under the Act:

[I]nformation . . . 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 information in Exhibit 2 reveals [REDACTED]

Accordingly, SBISD maintains that the information in Exhibit 2 should be protected from release pursuant to Section 552.101 of the Act and Section 418.182 of the HSA.



3. The information in Exhibit 2 is exempt from disclosure under Texas Government Code Section 552.108, as it is information held by a law enforcement agency.

SBISD asserts that the information in Exhibit 2 contains law enforcement information excepted from disclosure under Texas Government Code § 552.108, which applies to the release of certain information held by a law enforcement agency. SBISD asserts that the information in Exhibit 2 is excepted from disclosure under subsections 552.108(a)(1) and 552.108(b)(1). This section of the Government Code exempts from public disclosure certain law enforcement and prosecutorial information:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:
 - (1) release of the information would interfere with the detection, investigation, or prosecution of crime;
- (b) An internal record or notation of law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from requirements of Section 552.021 if:
 - (1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

TEX. GOV'T CODE § 552.108 (alterations and omissions added).

The SBISD PD is charged with the duty and responsibility to investigate crimes and enforce criminal laws within the boundaries of the District. Sections 552.108(a)(1) and (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 Sections 552.108(a)(1) and (b)(1) except 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 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).

[REDACTED] Stated differently, release of the information in Exhibit 2 would interfere with SBISD PD's detection and investigation of crime. Thus, under Texas Government Code Sections 552.108(a)(1) and 552.108(b)(1), SBISD asserts that the information included in Exhibit 2 is confidential.

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

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

