



ATTORNEY GENERAL OF TEXAS
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June 23, 2009

Mr. John A. Kazen
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OR2009-08613

Dear Mr. Kazen:

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# 346843.

The Laredo Independent School District (the "district"), which you represent, received two requests for information related to an investigation of a named employee. You state that the district does not have information in response to portions of the first request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you did not submit information responsive to portions of the first request related to certain employment information regarding the named individual. We

¹We note that the Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

²Although you also claim the submitted information is excepted under section 552.305 of the Government Code, that provision is not an exception to disclosure. Rather, section 552.305 requires a governmental body to notify third parties whose proprietary interests may be implicated by a request for information of the request and of the parties' right to submit comments to this office explaining why the requested information should be withheld from disclosure. See Gov't Code § 552.305(d).

assume the district has released this information to the requestor. If it has not, it must do so at this time to the extent that such information existed when the request was received. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances). We caution, however, that the Act imposes criminal penalties for the release of confidential information.

We also note that a portion of the first request requires the district to answer questions. A governmental body is not required to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). We therefore assume the district has made a good faith effort to locate any information that would be responsive to the first requestor's inquiries in the present request.

Next, we must address the district's responsibilities under the Act. Section 552.301(e) of the Government Code requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request: (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See* Gov't Code § 552.301 (e)(1)(A)-(D). You state that the first request was received by the district on April 2, 2009. The district timely submitted some responsive records on April 23, 2009. However, the district did not submit a second set of documents responsive to the April 2nd request until May 26, 2009, well beyond the fifteen-business-day deadline. *See id.* § 552.308(a) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we find that the district failed to comply with the requirements of section 552.301 of the Government Code regarding the second set of documents.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). Section 552.108 is a discretionary exception and, as such, does not generally provide a

compelling reason to withhold information. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 522 at 4 (1989) (discretionary exceptions in general). Consequently, the district may not withhold any of the information contained in the second set of documents under section 552.108. However, sections 552.101 and 552.135 of the Government Code can provide compelling reasons to withhold information. Accordingly, we will determine whether the district must withhold any of the information that was not timely submitted on either of those grounds. We also will determine whether any of the other information at issue is excepted from disclosure on those grounds or under any of the exceptions the district claims.

Section 552.101 of the Government Code excepts from public 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 protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note that the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, you represent that the submitted information pertains to a report of alleged or suspected child abuse and to an investigation of alleged or suspected child abuse conducted by the district's police department. *See id.* § 261.001(1) (defining "abuse" for the purposes of chapter 261 of the Family Code). Because the records at issue consist of a report of alleged or suspected abuse or neglect made chapter 261 and of information used or developed in an investigation of alleged or suspected child abuse, the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated that the district's police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district must withhold the submitted information in its entirety under

section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As our ruling is dispositive, we do not address your remaining claims.

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 http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/dls

Ref: ID# 346843

Enc. Submitted documents

c: Requestors
(w/o enclosures)