



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2009

Ms. Melanie L. Hollmann
Atkins, Hollmann, Jones, Peacock, Lewis & Lyon
3800 East 42nd Street, Suite 500
Odessa, Texas 79762

OR2009-17161

Dear Ms. Hollmann:

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# 363254.

The Ector County Independent School District (the "district"), which you represent, received a request for a copy of the superintendent's board update packet for a specified school week. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted 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 section encompasses information protected by other statutes, such as section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997. The relevant language of section 58.007 reads:

(c) Except as provided by subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B, D, and E.

Fam. Code § 58.007(c). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age. *See* Fam. Code § 51.02(2). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find the submitted information does not identify any individual as a juvenile suspect or offender. Therefore, the district may not withhold any portion of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108(a)(1) 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(a)(1) must reasonably 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). You have submitted an affidavit from the district’s police department stating that they are conducting an ongoing criminal investigation pertaining to students participating in the use of illegal or controlled substances. The affidavit states that the release of information pertaining to the investigation would jeopardize the investigation and the potential for future prosecutions. We agree that some of the information, which we have marked, relates to the ongoing criminal investigation. However, you have failed to explain how the remaining information, which consists of a Local Government Officer Conflicts Disclosure Statement and instructions; relates to the ongoing criminal investigation. Consequently, section 552.108(a)(1) is not applicable to this information. Therefore, the district may withhold the information we have marked under section 552.108(a)(1) of the Government Code. The remaining information must be released.

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, toll free at (888) 672-6787.

Sincerely,



Andrea L. Caldwell
Assistant Attorney General
Open Records Division

ALC/eeg

Ref: ID# 363254

Enc. Submitted documents

c: Requestor
(w/o enclosures)