



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 31, 2011

Ms. Courtney A. Kuykendall
Abernathy, Roeder, Boyd & Joplin, P.C.
For the Mansfield Independent School District
P.O. Box 1210
McKinney, Texas 75070-1210

OR2011-01600

Dear Ms. Kuykendall:

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# 407532.

The Mansfield Independent School District (the "district"), which you represent, received a request for a specified police report. You claim the submitted case report is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the district has redacted student-identifying information in the submitted case report pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. However, FERPA is not applicable to law enforcement records maintained by the district's police department (the "department") that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Most of the submitted records are law enforcement records prepared by the department for a law enforcement purpose. Thus, these records are not subject to FERPA and no portion of them may be withheld on that basis.

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. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] 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).¹ The case report includes an investigative record created by the Child Protective Services Division (“CPS”) of the Texas Department of Family and Protective Services as part of its investigation of alleged or suspected abuse. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Therefore, the investigative record falls within the scope of section 261.201. You have not indicated CPS has adopted a rule that governs the release of this information in this instance; therefore, we assume that no such regulation exists. Given that assumption, we conclude the intake report is confidential under section 261.201. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district must withhold the intake report, which we marked, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.108(a)(2) 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 . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain the remaining information pertains to a concluded criminal investigation conducted by the

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

department. You also state, and provide an affidavit from the department stating, the final result of this investigation was closing the case and clearing the accused. Thus, you state the remaining information relates to a criminal investigation that ended in a result other than conviction or deferred adjudication. Based on your representations and our review, we agree section 552.108(a)(2) is applicable to the remaining information.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). You argue that section 552.108(c) does not apply since the department's investigation did not result in any arrest. However, the application of section 552.108(c) is not dependent upon an arrest. You seek to withhold the identifying information of witnesses and the victim. Basic information does not include the identity of victims or witnesses, but does include the identity of the complainant. *Id.* at 4. Because the victim in this instance is listed as the complainant, we will address your arguments for withholding the complainant's identifying information.

You seek to withhold from disclosure the complainant's identifying information in the basic information under section 552.135 of the Government Code. Section 552.135 provides, in relevant part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Id. § 552.135(a)-(b). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under this exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.301(e)(1)(A), .135(a). You state the complainant reported possible violations of section 22.01 of the Texas Penal Code to the department. Based on your representations and our review, we conclude the district must withhold the complainant's identifying information under section 552.135 of the Government Code.²

²As our ruling on this issue is dispositive, we need not address your remaining argument under section 552.101 of the Government Code in conjunction with the informer's privilege.

In summary, the district must withhold the marked intake report created by CPS under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the office may withhold the remaining information under section 552.108(a)(2) of the Government Code. However, in releasing the basic information, the district must withhold the complainant's identifying information under section 552.135 of the Government Code. The remaining basic information must be released pursuant to section 552.108(c) of the Government Code.

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,



~~Kenneth Leland Conyer~~
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 407532

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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