



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 29, 2011

Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
1111 West Sixth Street, Room A-240  
Austin, Texas 78703

OR2011-05860

Dear Ms. Janssen:

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# 415860.

The Austin Independent School District (the "district") received a request for the requestor's client's personnel file and all documents concerning the client's conduct or performance, including complaints or comments made against him. You state you have released some responsive information to the requestor. You claim the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted information.

Initially, we note the district has redacted some student-identifying information in the submitted offense report. We note the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code 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. The submitted law enforcement records relate to an investigation by the department and are maintained by the department. Thus, this information is not subject to FERPA, and no portion of it may be withheld on that basis.

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.108 of the Government Code, section 552.101 does not encompass other exceptions in the Act.

Next, we note you have redacted additional information from the submitted documents. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), (e)(1)(D). The district has redacted the home addresses and home telephone numbers of the requestor's client and another district employee. Section 552.024 of the Government Code authorizes a governmental body to redact from public release a current or former employee's home address and telephone number, and social security number subject to section 552.117(a)(1) of the Government Code without the necessity of requesting a decision from this office under the Act, if the employee or official timely elected to withhold such information. *See id.* §§ 552.024(a)-(c), .117(a)(1). However, section 552.117 applies only to records that a governmental body is holding in an employment capacity. The submitted information consists of law enforcement records maintained by the department in a law enforcement capacity and is not held by the district as an employer. Therefore, we find section 552.117(a)(1) of the Government Code does not apply in this situation, and the district may not withhold any portion of the information you have redacted on that basis.

The district has also redacted social security numbers, which the district is generally authorized to redact under section 552.147(b) of the Government Code, and Texas driver's license numbers, which the district is generally authorized to redact pursuant to Open Records Decision No. 684 (2009). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver's license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, we note sections 552.130 and 552.147 of the Government Code protect personal privacy. Therefore, the requestor has a right of access to his client's private information under section 552.023 of the Government Code, and it may not be withheld from him under section 552.130 or section 552.147. *See Gov't Code* § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). The district may withhold the remaining social security numbers you have redacted under section 552.147(b) of the Government Code and the remaining Texas driver's license numbers you have redacted under section 552.130 of the Government Code pursuant to Open Records Decision No. 684.

In addition, the district has redacted dates of birth and local identification numbers. However, you do not assert, nor does our review of the records indicate, you have been authorized to withhold any of the remaining redacted information without seeking a ruling from this office. *See Gov't Code* § 552.301(a); Open Records Decision No. 673 (2001). Thus, information must be submitted in a manner that enables this office to determine

whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

(a) [T]he 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). Upon review, we find the submitted information was used or developed in an investigation by the department of alleged child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261); *see also* 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). You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). As our ruling is dispositive, we need not address your remaining argument against disclosure.

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](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,

A handwritten signature in cursive script that reads "Jennifer Burnett". The signature is written in black ink and is positioned above the typed name.

Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/dls

Ref: ID# 415860

Enc. Submitted documents

c: Requestor  
(w/o enclosures)