



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 1, 2012

Mr. Derrell Coleman
West & Associates, L.L.P.
320 South R.L. Thornton Freeway, Suite 300
Dallas, Texas 75203

OR2012-06305

Dear Mr. Coleman:

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# 452394.

The Willis Independent School District (the "district"), which you represent, received a request for the employment history of a named educator, any allegations and complaints regarding the educator, and information regarding an investigation involving the educator and allegations of an improper relationship with a student. You state you have released some of the requested information. You argue the submitted information is not subject to the Act. In the alternative, you claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.135 of the Government Code. We have considered your arguments and reviewed the submitted information.

Initially, you argue the submitted information is not public information subject to the Act. The Act applies to "public information," which is defined by section 552.002 of the Government Code as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002; *see also id.* § 552.021. Information is generally subject to the Act when it is held by a governmental body and relates to the official business of a governmental body or is used by a public official or employee in the performance of official duties. Thus, virtually all of the information in a governmental

body's physical possession constitutes public information and thus is subject to the Act. *Id.* § 552.002(a)(1).

You state the submitted information consists of district administrators' notes taken as part of an investigation into an alleged improper relationship between a district educator and a student. You state the notes memorialize the administrators' conversations with victims and witnesses, in order to provide this information to the Montgomery County Constable's Office. You argue the notes were not maintained under a law or ordinance or in connection with the transaction of official business due to the fact that the educator resigned and the notes were prepared by district administrators in cooperation with law enforcement "because of their personal conviction for the safety and welfare of the students involved." However, we note the submitted information was created as part of an investigation into a district employee's misconduct by district administrators and the alleged misconduct involved an improper relationship between the employee and a student of the district. Therefore, we conclude the notes were collected, assembled, or maintained in connection with the transaction of official business of the district, and thus, constitute "public information" as defined by section 552.002(a).

Next, we must address the district's obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving an open records request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e)(1)(A)-(D). In this instance, the district received the request for information on February 13, 2012. Thus, the district's fifteen-business-day deadline was March 6, 2012. However, the district did not submit a copy of the responsive information for our review until April 18, 2012. Consequently, we find the district failed to comply with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the 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; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *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); *see also* Open Records Decision No. 630 (1994). The presumption that information is public under section 552.302

can be overcome by demonstrating that the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Section 552.108 of the Government Code is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). However, the need of another governmental body to withhold information under section 552.108 can provide a compelling reason to overcome the presumption of openness. Open Records Decision No. 586 (1991). You state the Montgomery County Constable's Office and the Montgomery County District Attorney's Office object to the release of the submitted information under section 552.108. In addition, sections 552.101, 552.102, and 552.135 of the Government Code can provide compelling reasons for non-disclosure. Accordingly, we will consider whether the information at issue is excepted from disclosure under the Act.

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 261.201 of the Family Code, which provides, in relevant part:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note the district is not an agency authorized to conduct an investigation under chapter 261. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, you state the submitted information is being utilized in an investigation of alleged or suspected child abuse conducted by the Montgomery County Constable's Office and the Montgomery County District Attorney's Office, which we note are agencies authorized to conduct investigations under chapter 261. Thus, we conclude the information falls within the scope of section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for the purposes of this section as a 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), 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code). As you do not indicate that the investigating agencies have adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, and based on our review, we determine that 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 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/sdk

Ref: ID# 452394

Enc. Submitted documents

c: Requestor
(w/o enclosures)

¹As our ruling is dispositive, we need not address your remaining arguments against disclosure.