



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2013

Ms. Pam Young Kaminsky
Attorney
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2013-05055

Dear Ms. Kaminsky:

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# 486954.

The Fort Bend Independent School District (the "district") received a request for any information that mentions the requestors or their child by name. You state some responsive information has been released, but claim 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 exception encompasses information other statutes make confidential. You claim section 552.101 in conjunction with section 261.201 of the Family Code, which provides in 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 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). 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 that the submitted information pertains to an investigation of alleged or suspected child abuse by the district's police department, which is an agency authorized to conduct investigations under chapter 261. Accordingly, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code and is therefore confidential under section 261.201(a). *See id.* § 261.001(1) (defining "abuse," for purposes of Fam. Code ch. 261). In this instance, however, the requestors are the parents of the child who was the victim of the alleged or suspected abuse, and the parents are not accused of committing the abuse. Therefore, the district may not withhold the submitted information from these

requestors on the basis of section 261.201(a). *See id.* § 261.201(k). Section 261.201(3) provides, however, that the identity of the reporting party must be withheld. *See id.* § 261.201(1)(3). Section 261.201(2) also provides that any information excepted from disclosure under the Act or other law may be withheld. *See id.* § 261.201(1)(2). Therefore, we will address your other claims under sections 552.101 and 552.108 of the Government Code.

You also claim section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code, which provides in part:

(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 Subchapters B, D, and E.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of Fam. Code tit. 3). 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. Although you contend the submitted information is confidential under section 58.007(c), we find the information at issue does not involve a juvenile suspect or offender. We therefore conclude the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

Section 552.108 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental

body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the submitted information is related to an investigation that is pending with the district police department. Based on your representation, we find release of the information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

We note 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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code. *See* ORD 127. The district must generally release basic information, including information that identifies the complainant and a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. In releasing basic information, however, the district must withhold the information that identifies the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. The district may withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code, except for the basic information that must be released under section 552.108(c).¹ In releasing basic information, however, the district must withhold the information that identifies the reporting party, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.

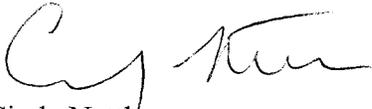
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

¹We note the requestors have a right of access in this instance to information the district would be required to withhold from the general public. Should the district receive another request for this same information from a different requestor, the district should resubmit this information and request another decision. *See* Gov’t Code §§ 552.301(a), .302.

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 black ink, appearing to read "Cindy Nettles". The signature is fluid and cursive, with the first name "Cindy" written in a larger, more prominent script than the last name "Nettles".

Cindy Nettles
Assistant Attorney General
Open Records Division

CN/akg

Ref: ID# 486954

Enc. Submitted documents

c: Requestor
(w/o enclosures)