



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2013

Ms. Ellen H. Spalding  
Counsel for the Santa Fe Independent School District  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2013-07514

Dear Ms. Spalding:

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# 487088.

The Santa Fe Independent School District (the "district"), which you represent, received a request for any complaints or investigations into a named district employee for a specified time period. You claim some of the information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you contend, and we agree, some of the submitted information is not responsive to the present request for information because it was created outside the time period specified in the request. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release such information in response to this request.

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<sup>1</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

Next, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires that a governmental body ask for a decision from this office and state which exceptions apply to the requested information by the tenth business day after receiving the request. Gov't Code § 552.301(b). You state the district received the request for information on February 20, 2013; therefore, the ten-business-day deadline was March 6, 2013. While the district timely raised sections 552.101, 552.102, and 552.108 of the Government Code within the ten-business-day time period as required by subsection 552.301(b), the district did not raise section 552.135 of the Government Code until after the ten-business-day deadline had passed. Thus, the district failed to comply with the requirement mandated by section 552.301(b) with respect to its argument under section 552.135.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body overcomes this presumption by demonstrating a compelling reason to withhold the information. *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); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). Because section 552.135 can provide a compelling reason to withhold information, we will consider the applicability of this exception to the responsive 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 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 261.201 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, the responsive information pertains to an investigation of alleged or suspected child abuse by the district's police department (the "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 and falls within the scope of section 261.201 of the Family Code. *See 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), 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the responsive information must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Furthermore, because section 261.201(a) protects all "files, reports, records, communications, audiotapes, videotapes, and working papers" related to an investigation under section 261.201, the district must not release front page offense report information. *See id.* § 261.201(a)(2). As our ruling is dispositive, we need not address your remaining arguments 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,



Lindsay E. Hale  
Assistant Attorney General  
Open Records Division

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Ref: ID# 487088

Enc. Submitted documents

c: Requestor  
(w/o enclosures)