



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 5, 2013

Ms. Cynthia Rincón
General Counsel
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2013-21141

Dear Ms. Rincón:

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# 507704 (FBISD ORR# 2013-14-184).

The Fort Bend Independent School District (the "district") received a request for: (1) the number of tickets or citations issued to students for gang membership for each of the 2012-13, 2011-12, and 2010-11 school years; (2) the number of students arrested for gang membership for each of the 2012-13, 2011-12, and 2010-11 school years; (3) the number of students submitted to the Texas Gang Database for each of the 2012-13, 2011-12, and 2010-11 school years; (4) the number of gang-related incidents, crimes, or disciplinary actions involving students for each of the 2012-13, 2011-12, and 2010-11 school years; and (5) all police incident reports for gang-related incidents, crimes, or disciplinary actions involving students for each of the 2012-13, 2011-12, and 2010-11 school years, with student names redacted. You state you have released some responsive information to the requestor. You 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.

Initially, we note the requestor excluded from her request the names of students identified in any police incident reports. Accordingly, these names are not responsive to the present request. The district need not release nonresponsive information in response to this request and this ruling will not address that information.

Next, we note you have redacted portions of the responsive information. 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). You do not assert, nor does our review of our records indicate, that you have been authorized to withhold the redacted information without first seeking a ruling from this office. *See* Gov't Code § 552.301(a); ORD 673. Thus, this 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 at issue; thus, being deprived of that information does not inhibit our ability to make a ruling. However, in the future, failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See* Gov't Code § 552.302.

Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the request (1) 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. Gov't Code § 552.301(e). You have submitted information to this office marked Exhibit E that you state has been released to the requestor. You state Exhibit E consists of redacted police reports that are responsive to the request. However, as of the date of this letter, you have not submitted to this office unredacted versions of these reports or reasons why any exception to disclosure under the Act applies to the portions of the reports you have redacted. Consequently, we find the district has failed to comply with the procedural requirements mandated by section 552.301(e) with regards to the redacted portions of Exhibit E.

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 requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342 (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); *see also* Open Records Decision No. 319 (1982). Generally, a compelling reason exists when third party interests are at stake or when information is confidential under other law. Open Records Decision No. 177 (1977). As you raise no exceptions to disclosure for the redacted information, we find you have not provided a compelling reason to withhold this information. Thus, we have no choice but to order you to release this information in accordance with section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

Section 552.101 of the Government Code exempts 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 section 58.007 of the Family Code, which provides in relevant part the following:

(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). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”); *see also id.* § 51.04. For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *Id.* § 51.02(2). Upon review, we find the information you have marked Exhibits C and D involves children engaged in delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to this information. Therefore, the district must withhold Exhibits C and D in their entirety pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code.¹

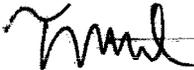
In summary, the district must withhold Exhibits C and D in their entirety pursuant to section 552.101 in conjunction with section 58.007(c) of the Family Code. The remaining information must be released.

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.

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

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 507704

Enc. Submitted documents

c: Requestor
(w/o enclosures)