



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2015

Ms. Lori J. Robinson
Staff Attorney
Austin Independent School District
1111 West Sixth Street, Suite A240
Austin, Texas 78703

OR2015-06121

Dear Ms. Robinson:

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# 558259.

The Austin Independent School District (the "district") received a request for all contents of district files regarding the requestor, including the district's police department's (the "department") files. You indicate you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See Gov't Code* § 552.301. Section 552.301(e) provides a governmental body must submit to this office, not later than the fifteenth business day after the date of its receipt of the request for information, (1) written comments stating why the governmental body's claimed exceptions apply to

¹Although you raise Texas Rule of Evidence 503 for the information in Exhibit G, we note the proper exception to raise when asserting the attorney-client privilege for information not subject to section 552.022 of the Government Code is section 552.107(1) of the Government Code. *See Open Records Decision No. 676 at 6 (2002).*

the information it seeks to withhold, (2) a copy of the written request for information, (3) a signed statement of the date on which the governmental body received the request or evidence sufficient to establish that date, and (4) the specific information the governmental body seeks to withhold or representative samples if the information is voluminous. *See id.* § 552.301(e)(1)(A)-(D). You state the district received the request for information on January 6, 2015. You inform us the district was closed for business on January 19, 2015. Thus, the district's fifteen-business-day deadline was January 28, 2015. However, the district submitted the information required by section 552.301(e) in an envelope meter-marked January 29, 2015. *See id.* § 552.308(a) (prescribing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Consequently, we determine the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

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 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 (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 Nos. 630 (1994), 586 (1991), 319 (1982). This office has held a compelling reason exists to withhold information when third-party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Although you claim the submitted information is excepted from disclosure under sections 552.107 and 552.108 of the Government Code, these sections are discretionary exceptions to disclosure that protect a governmental body's interests and may be waived. *See Simmons*, 166 S.W.3d at 350 (section 552.108 is not compelling reason to withhold information under section 552.302); Open Records Decision Nos. 676 at 10-11 (attorney-client privilege under section 552.107(1) may be waived), 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). Because the district failed to comply with section 552.301, the district has waived its claims under sections 552.107 and 552.108. Accordingly, no portion of the submitted information may be withheld under section 552.107 or section 552.108 of the Government Code. However, because section 552.101 of the Government Code can make information confidential under the Act and can provide a compelling reason to withhold information, we will consider whether this section requires the district to withhold the submitted information.

Next, we note the district has redacted student-identifying information from portions of the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. However, in this instance, the information at issue was created by the district's police department (the "department")

for a law enforcement purpose. FERPA is not applicable to law enforcement records maintained by 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, 99.8. The information at issue relates to a criminal investigation by the department. Thus, these records are not subject to FERPA, and no portion of these records may be withheld on that basis. However, we will consider your remaining argument against disclosure of 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in pertinent 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.

Fam. Code § 261.201(a). You assert, and provide documentation from the department asserting, the information in Exhibit C, Exhibit D, and Exhibit E was used or developed in an investigation of suspected child abuse conducted by the department. Upon review, we find Exhibit C, Exhibit D, and the information we have marked in Exhibit E, were used or developed in an investigation of alleged or suspected child abuse conducted by the department under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 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(1) (defining “abuse” for purposes of section 261.201). You do not indicate the department has adopted a rule governing the release of this type of information; therefore, we assume no such regulation exists. Thus, we find Exhibit C, Exhibit D, and the information we have marked in Exhibit E are confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. However, we find you have failed to demonstrate how the remaining information in Exhibit E was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established this information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). Therefore, the district may not withhold the remaining information in Exhibit E under section 552.101

of the Government Code in conjunction with section 261.201 of the Family Code. Accordingly, the district must release the remaining information.

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.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,

A handwritten signature in black ink, appearing to read "Alley Latham", with a long, sweeping horizontal line extending to the right.

Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 558259

Enc. Submitted documents

c: Requestor
(w/o enclosures)