



KEN PAXTON  
ATTORNEY GENERAL OF TEXAS

May 29, 2015

Ms. Sarah W. Langlois  
Counsel for the Spring Branch Independent School District  
Rogers, Morris & Grover, LLP  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2015-10525

Dear Ms. Langlois:

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# 565204.

The Spring Branch Independent School District (the "district"), which you represent, received a request for (1) the applications, resumes, and any documents relating to internal complaints or investigations related to a named individual and the grade level principals and associate principal of a named district school, (2) documents detailing the location on any district website or directory of a named district school where parent e-mail addresses are made public, and (3) documents related to any district investigation into specified allegations.<sup>1</sup> You state the district has released information responsive to the first portion of the request. You state the district does not possess information responsive to the second portion of the request.<sup>2</sup> You claim the submitted information is excepted from disclosure

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<sup>1</sup>You state the requestor clarified the first portion of his request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

under sections 552.101, 552.108, 552.130, and 552.135 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>4</sup>

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, including section 261.201 of the Family Code, which provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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). Upon review, we find incident report numbers 201305452, 201511279, and 201510205 relate to investigations of alleged or suspected child abuse conducted by the district’s police department (the “department”). *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). Accordingly, we find this information is subject to chapter 261 of the Family Code. We have no indication the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude incident report numbers 201305452, 201511279, and 201510205 are confidential pursuant to section 261.201 of the Family Code, and the district must withhold them under section 552.101 of the Government Code.<sup>5</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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<sup>3</sup>Although you do not raise section 552.130 of the Government Code in your briefing to this office, we understand you to raise this exception based on your markings in the submitted documents.

<sup>4</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

<sup>5</sup>As our ruling is dispositive for this information, we need not address your arguments against its disclosure.

Section 552.101 of the Government Code also encompasses information protected by section 58.007 of the Family Code, which provides, in pertinent 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). 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. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007 of the Family Code). 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 at issue. *See id.* § 51.02(2). You claim the remaining information consists of law enforcement records and files concerning a child. However, none of the information at issue identifies an individual who was ten years of age or older and under seventeen years of age as a suspect or offender. Thus, we find none of the remaining information is confidential under section 58.007(c) of the Family Code. Accordingly, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code on that basis.

Section 552.108 of the Government Code provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime; [or]

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

Gov't Code § 552.108(a)(1)-(2). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). A governmental body claiming section 552.108(a)(2) must demonstrate the information at issue relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. You assert “some of the investigations [at issue] are closed internally” and “others are currently suspended, active and ongoing.” You further state “the investigations have not resulted in convictions or deferred adjudications.” However, you do not explain or indicate whether the remaining information pertains to an ongoing criminal case or a closed criminal case. Thus, we find the district has failed to demonstrate the applicability of sections 552.108(a)(1) and 552.108(a)(2) to the information at issue, and the district may not withhold the remaining information on either of those bases.

Section 552.135 of the Government Code provides, in relevant part:

(a) “Informer” means a student or a former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student’s or former student’s name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee’s or former employee’s name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov’t Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of “law,” a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, individuals who provide information in the course of an investigation, but do not report a violation are not informants for purposes of section 552.135 of the Government Code. We also note parents of students are not

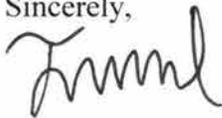
informants for purposes of section 552.135. You assert some of the remaining information identifies students and employees who reported alleged violations of criminal and civil laws. Upon review, however, we find the district has failed to demonstrate how any of the remaining information at issue reveals the identity of an informer for purposes of section 552.135 of the Government Code. Therefore, the district may not withhold any of the remaining information on that basis.

In summary, the district must withhold incident report numbers 201305452, 201511279, and 201510205 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. 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](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/bhf

Ref: ID# 565204

Enc. Submitted documents

c: Requestor  
(w/o enclosures)