



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 7, 2015

Ms. Holly A. Sherman  
Counsel for the Klein Independent School District  
Rogers, Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2015-16324

Dear Ms. Sherman:

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# 574526.

The Klein Independent School District (the "district"), which you represent, received a request for any and all records pertaining to the requestor's child. You state the district will release most of the requested information to the requestor. We understand the district will redact motor vehicle record information under section 552.130(c) of the Government Code.<sup>1</sup> Further, you state the district has redacted information not pertaining to the requestor's child pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C.

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<sup>1</sup>Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

§ 1232g(a).<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.102, 552.108, and 552.147 of the Government Code.<sup>3</sup> 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.”<sup>4</sup> 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 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 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

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<sup>2</sup>The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student’s consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>3</sup>Although the district does not raise section 552.147 of the Government Code in its brief to this office, we understand the district to raise section 552.147 based on its markings in the submitted documents.

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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[.]

Fam. Code § 261.201(a), (k), (l)(2). The district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Nevertheless, upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect by the district's police department. *See id.* §§ 101.003(a) (defining "child" for purposes of section 261.201 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), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Thus, the submitted information is subject to section 261.201 of the Family Code. We note, however, the requestor is a parent of the child victim named in the submitted information and is not alleged to have committed the suspected abuse. Therefore, the submitted information may not be withheld from the requestor under section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *See id.* § 261.201(l)(2). Accordingly, we will address whether any portion of the information at issue is excepted from disclosure.

Section 552.108 of the Government Code provides in 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;

(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), (b)(1), 552.301(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. In this instance, the district states it seeks to withhold the submitted information pursuant to section 552.108(a)(2). However, the district also asserts this information is excepted from disclosure under section 552.108 because it pertains to an investigation that is “still open” and “has not resulted in conviction or deferred adjudication.” Based on the conflicting representations, we find the district has failed to demonstrate the applicability of section 552.108(a)(2) to the information at issue; therefore, the district may not withhold the submitted information on that basis.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the district may not withhold any of the dates of birth you have marked under section 552.102(a) of the Government Code because the district does not hold the submitted information in an employment context.

Section 552.147 of the Government Code excepts from disclosure the social security number of a living person. Gov't Code § 552.147(a). You seek to withhold the social security number you have marked, which belongs to the requestor's minor child. We note, however, because section 552.147 protects personal privacy, the requestor has a right of access to her minor child's social security number under section 552.023 of the Government Code. *See id.* § 552.023 (governmental body may not deny access to person to whom information relates, or person's representative, solely on grounds that information is considered confidential by privacy principles). Thus, the district may not withhold the social security number you have marked under section 552.147 of the Government Code. As the district does not raise another exception to disclosure of the submitted information, the district must release the submitted information to this requestor.<sup>5</sup>

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<sup>5</sup>We note the requestor has a special right of access under section 261.201(k) of the Family Code to the information being released. *See* Fam. Code § 261.201(k). If the district receives another request for this same information from an individual who does not have a right of access to the information, the district should request another ruling. *See* Gov't Code §§ 552.301, .302; Open Records Decision No. 673 (2001).

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,



Lee Seidlits  
Assistant Attorney General  
Open Records Division

CLS/som

Ref: ID# 574526

Enc. Submitted documents

c: Requestor  
(w/o enclosures)