



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 20, 2016

Mr. Darin Darby
Counsel for the San Antonio Independent School District
Escamilla & Poneck, LLP
700 North Saint Mary's Street, Suite 850
San Antonio, Texas 78205

OR2016-13978

Dear Mr. Darby:

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# 614816.

The San Antonio Independent School District (the "district"), which you represent, received a request for all police reports regarding incidents or calls to a specified location during specified time periods. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

We note you have redacted information you claim is protected by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. The United States Department of Education Family Policy Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.² You state the

¹We 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.

²A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

district's police department has custody of some of the information at issue. We note FERPA is not applicable to records that were created by a law enforcement unit of an educational agency or institution for a law enforcement purpose and that are maintained by the law enforcement unit. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Accordingly, any information in the custody of the district's police department is not encompassed by FERPA and none of it may be withheld on that basis. However, records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of an educational agency or institution other than the law enforcement unit are not records of the law enforcement unit. *See* 34 C.F.R. § 99.8(b)(2). Such determinations under FERPA must be made by the district, so we will not address the applicability of FERPA to this information. Likewise, we do not address your argument under section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). However, we will consider your other arguments against disclosure of the submitted information.

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 [required public disclosure] if:

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

(2) it is information that the 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). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. In contrast, section 552.108(a)(2) protects information that relates to a concluded criminal investigation or prosecution that did not result in conviction or deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must explain how and why the exception it claims is applicable to the information the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We note section 552.108 generally is not applicable to purely administrative records that do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.).

You state some of the submitted information pertains to active investigations and, thus, is subject to section 552.108(a)(1). You also state some of the submitted information pertains to investigations that did not result in conviction or deferred adjudication and, thus, is subject to section 552.108(a)(2). However, you have submitted multiple reports to this office and

have not identified which reports pertain to active investigations and which reports pertain to closed investigations that did not result in convictions or deferred adjudications. Accordingly, we find you have failed to demonstrate the applicability of section 552.108 to the submitted information. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must provide comments explaining why claimed exceptions to disclosure apply). Therefore, we conclude the district may not withhold any portion of the submitted information under section 552.108 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”³ Gov't Code § 552.101. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(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). 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 reported conduct. *See id.* § 51.02(2). We note section 58.007(c) does not apply to law enforcement records that relate to a juvenile involved only as a complainant, victim, witness, or other involved party; rather, the juvenile must be involved as a suspect, offender, or defendant. Upon review, we find some of the submitted information consists of reports involving delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. However, we are unable to determine the ages of the offenders and suspects listed in

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the information at issue. Accordingly, we must rule in the alternative. To the extent any of the submitted reports concerns offenders or suspects who were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the district must withhold such reports in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, if the offenders or suspects at issue were under ten years of age or were seventeen years of age or older at the time of the conduct, then the information at issue does not involve juvenile conduct for purposes of section 58.007(c) of the Family Code, and such reports may not be withheld under section 552.101 of the Government Code on that basis. In that instance, we will consider the applicability of other exceptions to disclosure of the submitted information.

Section 552.101 also encompasses 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). We find event number 2014091729 appears to consist of an investigation of alleged child abuse conducted by the district's police department. However, we are unable to determine the age of the victim listed in the information at issue. *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), 261.201(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we must rule in the alternative. If event number 2014091729 involves a victim who was a child at the time of the incident at issue, then the information is subject to section 261.201 of the Family Code. In that instance, as you do not indicate the district's police department has adopted a rule that governs the release of this type of information, the district must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* However, if event number 2014091729 does not involve a victim of alleged abuse or neglect who was a child at the time of the incident at issue, then the information is not subject to section 261.201 of the Family Code and the district may not withhold the information at issue on that basis.

In summary, to the extent any of the submitted reports reference offenders or suspects who were ten years of age or older and under seventeen years of age at the time of the conduct at issue, the department must withhold such reports in their entireties under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. If event number 2014091729 involves a victim who was a child at the time of the incident at issue, that report must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 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.

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,



Ian Lancaster
Assistant Attorney General
Open Records Division

IML/akg

Ref: ID# 614816

Enc. Submitted documents

c: Requestor
(w/o enclosures)