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ATTORNEY GENERAL OF TEXAS

July 15, 2016

Ms. Sierra Fisher
Counsel for Beaumont Independent School District
Karczewski Bradshaw LLP
315 North Church Street
Nacogdoches, Texas 75961

OR2016-16046

Dear Ms. Fisher:

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# 618532.

The Beaumont Independent School District (the "district"), which you represent, received a request for (1) all formal complaints that led to sexual assault investigations at Central High School during the 2015-2016 academic school year, and (2) all formal complaints of sexual assault at district campuses in the 2015-2016 academic school year. You state the district has released some information. 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.

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 made confidential by other statutes, such as section 261.201(a) 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.

Fam. Code § 261.201(a). Upon review, we find the submitted reports may have been used or developed by the district's police department (the "department") in investigations of alleged or suspected child abuse under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1) (defining "abuse" for purposes of Family Code chapter 261); *see also 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 disabilities of minority removed for general purposes). However, we note we are unable to determine the ages of the alleged victims. Therefore, we must rule conditionally. If any of the submitted reports involves a victim of alleged abuse who was a child at the time of the incident at issue, the district must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ However, if any of the alleged victims at issue were not a child as defined by section 101.003 of the Family Code at the time of the incidents at issue, the submitted reports are not subject to section 261.201, and they may not be withheld under section 552.101 on that basis. In that instance, we will address your remaining argument for the information at issue.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information 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 (Tex. 1977). You state report numbers 15-0871, 15-1102, 16-0019, and 16-0394 pertain to active criminal investigations or prosecutions by the department. Based on your representations, we conclude the release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, section 552.108(a)(1) is applicable to report numbers report numbers 15-0871, 15-1102, 16-0019, and 16-0394.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See Gov't Code* § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded

¹In this instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state report number 15-0745 pertains to a closed case that did not result in conviction or deferred adjudication. Based on your representation, we agree section 552.108(a)(2) is applicable to report number 15-0745.

However, we note section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes the identification of a complainant, but does not include the identity of a victim unless the victim is also the complainant. *See* ORD 127 at 3-4. Thus, with the exception of the basic information, which must be released, the district may withhold report numbers 15-0871, 15-1102, 16-0019, and 16-0394 under section 552.108(a)(1) of the Government Code and may withhold report number 15-0745 under section 552.108(a)(2) of the Government Code.

You also claim the basic information is subject to the doctrine of common-law privacy. 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 the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683.

In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. ORD 393 at 2; *see* Open Records Decision No. 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d at 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information).

Upon review, we find some of the basic information contains identifying information of a sexual assault victim. This information meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, in releasing basic information, the district must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find you have not demonstrated any of the remaining basic information is highly intimate or embarrassing and not of legitimate concern to the public. Thus, none of the remaining basic information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, if any of the submitted reports involves a victim of alleged abuse who was a child at the time of the incident at issue, the district must withhold the information at issue under

section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If any of the alleged victims at issue were not a child as defined by section 101.003 of the Family Code at the time of the incidents at issue, then, with the exception of the basic information, the district may withhold report numbers 15-0871, 15-1102, 16-0019, and 16-0394 under section 552.108(a)(1) of the Government Code and may withhold report number 15-0745 under section 552.108(a)(2) of the Government Code; however, in releasing basic information, the district must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy.

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 618532

Enc. Submitted documents

c: Requestor
(w/o enclosures)