



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1998

Ms. Beverly R. Rickhoff
Schulman, Walheim & Heidelberg, Inc.
112 East Pecan, Suite 3000
San Antonio, Texas 78205-1528

OR98-1360

Dear Ms. Rickhoff:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 115489.

The San Antonio Independent School District Police Department (the "district") received a request for information regarding:

- (1) Jefferson High School (1995 through 1998);
- (2) Brackenridge High School (1994-1996);
- (3) Hawthorne Elementary (August 1997-February 1998);
- (4) Washington Elementary (September 1993-1996); and
- (5) All disturbances at 141 Lavaca (September 1996-present).

The request for information also specifies certain information regarding police and peace officers. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the sample documents you have submitted to this office, labeled PAC-001 through PAC-142.¹

Initially, we address your concern that the requestor asks the district to answer specific questions concerning the district's peace officers. A governmental body must make a good faith effort to relate a request to information which it holds, Open Records Decision No. 561 (1990), but the Open Records Act (the "act") does not ordinarily require a

¹We assume that 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. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

governmental body to answer factual questions. Open Records Decision Nos. 555 (1990), 379 (1983). Furthermore, the act applies only to information in existence and does not require a governmental body to obtain new information in order to comply with a request. Open Records Decision No. 561 (1990). Therefore, the district need not further respond to this portion of the request.

You also express concern that the request for information is overly broad and that you cannot determine with specificity the documents sought by the requestor. Numerous opinions of this office have addressed situations in which a governmental body has received either an "overbroad" written request for information or a written request for information that the governmental body is unable to identify. Open Records Decision No. 561 (1990) at 8-9 states:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

In response to the request at issue here, the district must make a good-faith effort to relate the request to the information in the district's possession and must help the requestor to clarify her request by advising her of the types of information available. We note that if a request for information is unclear, a governmental body may ask the requestor to clarify the request. Gov't Code § 552.222(b); *see also* Open Records Decision No. 561 (1990) at 8.

As for your concern that responding to the request would require "a significant bond to cover [the district's] Department costs," we note that the Open Records Act gives the requestor access to all responsive information that is subject to required public disclosure. Although the district may be able to require the requestor to post bond for or prepay the costs of responding to this request, the act gives the requestor access to all responsive information that is subject to required public disclosure. *See* Gov't Code § 552.263 The district may discuss with the requestor how she may narrow her request, but in doing so, the district should advise the requestor of the types of information available so that she may appropriately revise her request. *See* Open Records Decision No. 561 (1990).

In this case, you state that you have asked the requestor to clarify her request for information. You also state that, as the requestor has not yet narrowed her request, you have identified those documents that you believe are responsive to the request and now seek a

ruling on the disclosure of those documents. We now address your arguments against disclosure.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation is realistically contemplated and is more than mere conjecture. Open Records Decision No. 518 (1989) at 5. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

In this instance, you claim that some of the requested documents are related to pending litigation. You have provided information showing that the district is a defendant in pending litigation, *Mass v. San Antonio Independent School Dist., et al.*, No. SA96CA1385 (W.D. Tex. filed Dec. 26, 1996). Upon review, we conclude that litigation is pending and that the documents marked PAC-069 - PAC-104 relate to the pending litigation.

You also assert that the documents which you have submitted to this office for review labeled PAC-053 - PAC-062 are related to anticipated litigation. We agree, after a review of the materials submitted, that litigation is reasonably anticipated and that these documents are related to the anticipated litigation. We therefore conclude that the district may withhold from disclosure PAC 053 - PAC-062 and PAC-069 - PAC-104 under section 552.103(a).

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

Section 552.108 provides that

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [public disclosure] 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; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of [s]ection 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and

why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You have not explained the status of the cases that are the subject of the requested documents or otherwise explained the applicability of section 552.108 to the submitted records. Thus, we cannot conclude that section 552.108 is applicable to the information submitted in this instance. *See* Open Records Decision No. 363 (1983). Therefore, you may not withhold this information under section 552.108.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Seventy-fifth Legislature passed House Bill 1550² which amends the Family Code. Open Records Decision No. 644 (1996) holds that section 58.007 of the Family Code does not make confidential juvenile law enforcement records concerning juvenile conduct occurring on or after January 1, 1996, that are maintained by law enforcement agencies. Juvenile offender records held by law enforcement agencies are now expressly confidential under section 58.007(c) of the Family Code. The relevant language of amended Family Code section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child may not be disclosed to the public and shall be:

- (1) kept separate from adult files and records, and
- (2) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Open Records Decision No. 644 (1996) still applies to records concerning juvenile conduct that occurred from January 1, 1996, to August 31, 1997. Section 58.007(c) of the Family Code only applies to juvenile law enforcement records concerning juvenile conduct occurring on or after September 1, 1997, that are maintained by law enforcement agencies. Juvenile law enforcement records concerning conduct that occurred before January 1, 1996, are governed by former section 51.14(d) of the Family Code, which is continued in effect for that purpose. Act of June 2, 1997, H.B. 1550, 75th Leg., R.S.

Upon review of the documents at issue here, we find that PAC-003 - PAC-006, PAC-009 - PAC-012, PAC-109 - PAC-110, PAC-122 - PAC-130, and PAC-137 - PAC-140 involve juvenile conduct that occurred after September 1, 1997.³ It does not appear that any

²Act of June 2, 1997, H.B. 1550, 75th Leg., R.S.

³Section 58.007 is inapplicable to PAC-020 - PAC-022, PAC-111 - PAC-112, PAC-120 - PAC-121, and PAC-134 - PAC-136 because these records do not involve a child as defined by section 51.02. *See* Fam.

of the exceptions in section 58.007 applies; therefore, the submitted information is confidential pursuant to section 58.007(c) of the Family Code. Thus, you must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.

You also assert that some of the submitted documents are protected under section 552.102 of the Government Code. Section 552.102(a) is designed to protect public employees' personal privacy. The scope of protection under section 552.102(a), however, is very narrow. See Open Records Decision No. 336 (1982). See also Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). After a review of the submitted information, we conclude that the information is not excepted from disclosure by common-law privacy under sections 552.101 and 552.102.

Section 552.117(1) of the Government Code requires that the district withhold its employees' home address, home telephone number, social security number, and any information revealing whether the employee has family members, but only if the employee has elected to keep this information confidential in accordance with section 552.024 of the Government Code. Assuming the subject employees have made such an election, we conclude that these types of information must be withheld.

However, even if such an election has not been made, we note that section 552.117(2) makes confidential the same categories of information pertaining to "a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code." Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); see also Open Records Decision No. 506 (1988). Therefore, the district must withhold this type of information as it pertains to a peace officer wherever it appears in the information you submitted to this office as responsive to this request.

Finally, the Seventy-fifth Legislature has added section 552.130 to the Open Records Act which governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

Code § 51.02 ("child" is a person "seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age").

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. Therefore, the district must withhold copies of Texas drivers' licenses, drivers' license numbers, and motor vehicle registration information pursuant to section 552.130.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch
Assistant Attorney General
Open Records Division

VDP/alg

Ref.: ID# 115489

Enclosures: Submitted documents

cc: Ms. Lillie Wilson-Harris
People Against Corruption
P.O. Box 10609
San Antonio, Texas 78218
(w/o enclosures)