ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2006

Ms. Ylise Janssen
Senior School Law Attorney
Office of the General Counsel
Austin Independent School District
1111 West Sixth Street, Suite A-240
Austin, Texas

OR2006-08035

Dear Ms. Janssen

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# 254719.

The Austin Independent School District (the "district") received a request for a list of incident reports for Austin High School for the 2005-2006 school year and the actual reports for any incidents between September 16 and 27, 2005.[1] You state that you have released some of the requested information. You claim that 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.

The district claims that report number 05-003919 is excepted from disclosure under section 552.101of the Government Code in conjunction with section 261.201(a) of the Family Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code

[1]We note that the district asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also* Open Records Decision No. 663 (1999) (discussing tolling of deadlines during period in which governmental body is awaiting clarification).

§ 552.101. This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

> (a) The 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, 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). You state that report number 05-003919 was created by the district's police department for a law enforcement purpose. Further, you explain that this information was used or developed in an investigation of alleged or suspected child abuse. *See* Fam. Code §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code). Based on this representation and our review, we find that report number 05-003919 is within the scope of section 261.201 of the Family Code. You have not indicated that the district has adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. Given that assumption, report number 05-003919 is confidential in its entirety pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district must withhold this information from disclosure under section 552.101 of the Government Code as information made confidential by law.[2]

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) 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:

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[2]As our ruling is dispositive, we need not address your remaining argument for this information.

> (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 Subchapter B.

Fam. Code § 58.007(c). You claim that report number 05-003904 is confidential under section 58.007(c) of the Family Code. Upon review, we agree that this information pertains to juvenile delinquent conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, report number 05-003904 is confidential pursuant to section 58.007(c) of the Family Code. You must withhold this information from disclosure under section 552.101 of the Government Code.

You claim that report number 05-003942 is excepted from disclosure under section 552.108 of the Government Code. Section 552.108 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[.]

Gov't Code § 552.108(a). Subsection 552.108(a)(1) protects information that pertains to a specific pending criminal investigation or prosecution. A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the information at issue pertains to a pending criminal investigation conducted by the district's police department. Accordingly, we conclude that the release of this information 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*. *See*

Houston Chronicle, 531 S.W.2d at 185; Open Records Decision No. 127 at 3-5 (1976) (summarizing types of information made public by *Houston Chronicle*). Thus, the district must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. Although section 552.108(a) authorizes you to withhold the remaining information in report number 05-003942 from disclosure, you may choose to release all or part of the information at issue that is not otherwise confidential by law. *See* Gov't Code § 552.007.

In summary, the district must withhold report number 05-003919 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must withhold report number 05-003904 under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code. With the exception of basic information, the district may withhold report number 05-003942 under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

Tamara L. Harswick

Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/krl

Ref: ID# 254719

Enc. Submitted documents

c: Ms. Rachel Proctor May
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(w/o enclosures)