



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 30, 2008

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111 West Sixth Street, Suite A240
Austin, Texas 78703-5338

OR2008-14838

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# 326328.

The Austin Independent School District (the "district") received a request for information related to improper relations between staff and students from the years 2007-2008. You indicate the district has released some of the requested information. 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 information.

We note that some of the submitted information is subject to section 552.101 of the Government Code.¹ Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes, such as section 261.201 of the Family Code. *See* Gov't Code § 552.101. Section 261.201(a) 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

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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). Upon review, we determine that report number 08-001442 relates to an investigation of child abuse. *See id.* § 261.001(1), (4) (defining “abuse” for purposes of Fam. Code ch. 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 the disabilities of minority removed for general purposes). Thus, this report is within the scope of section 261.201 of the Family Code. You have not indicated that the district’s police department 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 08-001442 is confidential 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 report number 08-001442 from disclosure under section 552.101 of the Government Code as information made confidential by law.²

We will address your argument under section 552.108 of the Government Code for the remaining submitted report. Section 552.108(a)(1) 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 governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that report number 08-002251 relates to an ongoing criminal investigation by the district’s police department. Based on this representation and our review of the information at issue, we conclude that the release of report number 08-002251 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.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note that basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information refers to the information held to be public in *Houston Chronicle*, 531 S.W.2d 177. *See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information).* Here, however, the victim’s identifying information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.12 of the Penal Code.

²As our ruling is dispositive, we need not address your argument under section 552.108 of the Government Code for this report.

Section 552.101 also encompasses information protected by other statutes. Section 21.12(a) of the Penal Code provides that “[a]n employee of a public or private primary or secondary school commits an offense if the employee engages in . . . (1) sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works and who is not the employee’s spouse[.]” Penal Code § 21.12(a)(1). We further note that section 21.12(d) provides that “[t]he name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code.” *Id.* § 21.12(d). Thus, the name of the student allegedly involved in an improper relationship with an educator is confidential under section 21.12, and must be withheld from the basic information under section 552.101 of the Government Code.

In summary, the district must withhold report number 08-001442 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the district may withhold report number 08-00251 under section 552.108(a)(1) of the Government Code. In releasing basic information, the district must withhold the name of the student at issue in report number 08-00251 under section 552.101 of the Government Code in conjunction with section 21.12 of the Penal Code. The remaining basic information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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).

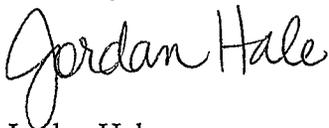
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 challenge 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,



Jordan Hale
Assistant Attorney General
Open Records Division

JH/jb

Ref: ID# 326328

Enc. Submitted documents

c: Ms. Regina Rodriguez
KAKW- UNIVISION
2233 West North Loop Boulevard
Austin, Texas 78728
(w/o enclosures)