



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 10, 2009

Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
Office of the General Counsel  
1111 West Sixth Street A240  
Austin, Texas 78703

OR2009-01772

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# 334625.

The Austin Independent School District (the "district") received a request for four categories of information pertaining to a particular student. You state you have released most of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

You assert the information in Exhibits D-M is protected under section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential

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<sup>1</sup>While you cite section 552.101 of the Government Code for your argument to withhold a government employee's family member information, we understand you to raise section 552.117 of the Government Code, as this section is the proper exception for the substance of your argument.

<sup>2</sup>We note the district has redacted information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. We note our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made. Therefore, we will not address the applicability of FERPA to any of the submitted information, except to note that parents have a right of access to their own child's education records. *See* 20 U.S.C. § 1232g(a)(1)(A).

by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses information that other statutes make confidential, such as 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(c). For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age. See Fam. Code § 51.02(2). Section 58.007 provides in pertinent part 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 Subchapter B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child’s parent or guardian.

...

(j) Before a child or a child’s parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

- (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

*Id.* § 58.007(c), (e), (j). Exhibits D-M involve juvenile conduct occurring after September 1, 1997; therefore, Exhibits D-M are subject to section 58.007. You assert the requestor should not have access to Exhibits D-M because he has not established he is qualified to access these records under section 58.007(b). However, section 58.007(e) allows the review or copy of juvenile law enforcement records by a child's parent or guardian. *Id.* § 58.007(e). We note the requestor is the parent of the juvenile offender; therefore, the information pertaining to the requestor's child may not be withheld under section 552.101 of the Government Code in conjunction with section 58.007(c). *See id.* § 58.007(e). We note section 58.007(j) further provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Thus, because you assert Exhibits D-M are excepted under section 552.108 of the Government Code and portions of Exhibits D-M contain information subject to section 552.130 of the Government Code, we must address whether Exhibits D-M are excepted under these sections. *See id.* § 58.007(j)(2).<sup>3</sup>

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)(1). 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* 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 and provide documentation showing Exhibits J-M are "part of [criminal investigations]." However, you have not informed this office how release of Exhibits J-M would interfere with the detection, investigation, or prosecution of crimes. Accordingly, you may not withhold Exhibits J-M under section 552.108(a)(1). You state and provide documentation showing Exhibits D-I relate to pending criminal investigations by the district's police department. Based on this representation and our review of the submitted documents, we conclude the release of Exhibits D-I 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).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. The district must release basic information, including a detailed description of the offense, even if this information

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<sup>3</sup>The 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).

does not literally appear on the front page of an offense or arrest report. *See Houston Chronicle*, 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, the district may withhold Exhibits D-I under section 552.108(a)(1) of the Government Code. However, because a complainant's identity is basic information, information that identifies or tends to identify victims who are complainants, other than the child of the particular requestor at issue in Exhibits D-I may not be released as basic information and must be redacted. *See* Fam. Code § 58.007(j)(1). Furthermore, any information that identifies or tends to identify juvenile suspects other than the child of the particular requestor at issue in Exhibits J-M must also be redacted pursuant to section 58.007(j)(1).

Exhibits J, K, and M contain information subject to section 552.130 of the Government Code. This section excepts from disclosure information relating to a Texas motor vehicle driver's license and information relating to a Texas motor vehicle title or registration. Gov't Code § 552.130. We have marked the Texas driver's license numbers in Exhibits J, K, and M the district must withhold under section 552.130 of the Government Code. We note to the extent the Texas driver's license number in Exhibit M belongs to the requestor, he has a right of access to it under section 552.023 of the Government Code. *Id.* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself).

Next, you assert the e-mails in Exhibit W are confidential under section 21.355 of the Education Code, which provides "a document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that a "teacher" for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You state the e-mails in Exhibit W relate to a teacher who held the appropriate teaching certificate and evaluate the individual's performance as a teacher. Based on your representations and our review, we conclude the e-mails at issue consist of a teacher evaluation for the purposes of section 21.355. Therefore, the district must withhold Exhibit W under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Next, you assert a portion of the information in Exhibit Y is confidential under section 552.101 of the Government Code in conjunction with common-law privacy. 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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). You have highlighted in yellow the information you claim is protected by common-law privacy. Upon review, we agree the personal medical information, which we have marked, is highly intimate or embarrassing and not of legitimate public concern. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. You have failed to demonstrate, however, how the remaining highlighted information is highly intimate or embarrassing. Thus, the remaining highlighted information may not be withheld under section 552.101 of the Government Code in conjunction with common-law privacy.

Finally, you assert some of the remaining information in Exhibit Y is excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf of former or current employees who have made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. In this instance, we have marked the information within Exhibit Y that is subject to section 552.117. You do not inform this office that the district employees whose information we have marked elected to keep their personal information confidential before the district received the instant request for information. We must therefore rule conditionally. If the employees whose personal information we have marked timely elected to withhold their personal information under section 552.024, the district must withhold the marked information under section 552.117(a)(1). If those employees did not timely elect confidentiality, the district may not withhold the marked information under section 552.117(a)(1).<sup>4</sup>

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<sup>4</sup>We note the submitted information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The requestor has a right, however, to his child's social security number. *See generally* Gov't Code § 552.023(b) (governmental body may not deny access to person to whom information relates, or that person's representative, solely on grounds that information is considered confidential by privacy principles).

In summary, with the exception of basic information, the district may withhold Exhibits D-I under section 552.108(a)(1) of the Government Code. In releasing basic information, the district must withhold any information that identifies or tends to identify juvenile victims who are complainants other than the child of the particular requestor at issue. *See* Fam. Code § 58.007(j)(1). The district must also withhold any information that identifies or tends to identify juvenile suspects other than the child of the requestor at issue in Exhibits J-M. *Id.* The district must withhold Exhibit W under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and the information we have marked in Exhibit Y under section 552.101 in conjunction with common-law privacy. To the extent the employees at issue made timely elections under section 552.024, the district must withhold the information we have marked in Exhibit Y pertaining to those employees under section 552.117(a)(1). 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton  
Assistant Attorney General  
Open Records Division

EBS/eeg

Ref: ID# 334625

Enc. Submitted documents

c: Requestor  
(w/o enclosures)