



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 30, 2009

Ms. Mari M. McGowan  
Abernathy, Roeder, Boyd & Joplin P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2009-04107

Dear Ms. McGowan:

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# 338383.

The Mansfield Independent School District (the "district"), which you represent, received a request for all records by a named officer pertaining to a specified report. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted a portion of the information from the submitted documents. It appears you have redacted this information pursuant to the Family Educational Rights and Privacy Act ("FERPA"). Recently, the United States Department of Education Family Policy Compliance Office informed this office that FERPA, 20 U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>1</sup> However, FERPA is not applicable to law enforcement records maintained by the district police department that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. The submitted information consists

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<sup>1</sup>We have posted a copy of the letter on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

of law enforcement records prepared by the district police department. Thus, the submitted information is not subject to FERPA and no portion of it may be withheld on that basis. Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information be released. *See Gov't Code §§ 552.301(e)(1)(D)* (governmental body must provide this office with copy of "specific information requested" or representative sample), 552.302. Thus, we will address the applicability of the claimed exceptions to the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, "child" means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See Fam. Code § 51.02(2)*. Section 58.007(c) reads as follows:

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.

*Id.* § 58.007. Upon review, we find the submitted information consists of juvenile law enforcement records that pertain to delinquent conduct that occurred after September 1, 1997. Because none of the exceptions in section 58.007 apply, we determine this information is confidential under section 58.007(c) and must be withheld pursuant to section 552.101 of the Government Code.<sup>2</sup>

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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,



Olivia A. Maceo  
Assistant Attorney General  
Open Records Division

OM/eeg

Ref: ID# 338383

Enc. Submitted documents

c: Requestor  
(w/o enclosures)