



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 6, 2009

Ms. Laura C. Rodriguez  
Walsh Anderson, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2009-04448

Dear Ms. Rodriguez:

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# 339091.

The Northside Independent School District (the "district"), which you represent, received a request for eight categories of information related to a specific student and incident. 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.

You state that, pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, you have redacted student-identifying information in certain district police department records; you inform this office that these records were "likely ... used in student disciplinary proceedings." The United States Department of Education Family Policy Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's 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> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

unredacted form, that is, in a form in which “personally identifiable information” is disclosed. See 34 C.F.R. § 99.3 (defining “personally identifiable information”). However, FERPA is generally not applicable to law enforcement records maintained by a district’s 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. However, records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of an educational agency or institution other than the law enforcement unit or that are used exclusively for a non-law enforcement purpose such as a disciplinary proceeding are not records of the law enforcement unit and, therefore, are education records subject to FERPA. See *id.* § 99.8(b)(2). Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education records. We will, however, address the applicability of sections 552.101 and 552.108 of the Government Code to the submitted information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code, which provides for the confidentiality of juvenile law enforcement records related to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. See Open Records Decision No. 680 at 4 (2004); see also Fam. Code § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”); 51.02(2) (defining “child” as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Section 58.007 provides in relevant part:

(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.

Fam. Code § 58.007(c). You assert that documents AG-0005 through AG-0021 are law enforcement records that involve juvenile delinquent conduct or conduct in need of supervision, occurring after September 1, 1997. Upon review, we agree that documents AG-0005 through AG-0016 are confidential law enforcement records under section 58.007(c). Furthermore, it does not appear that any of the exceptions in section 58.007 apply to this information. Accordingly, NISD must withhold documents AG-0005 through AG-0016 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>2</sup>

However, we note that documents AG-0017 through AG-0021 relate to incidents in which there were no juvenile suspects. Therefore, these documents do not constitute law enforcement records that involve juvenile delinquent conduct or conduct in need of supervision and they are not confidential under section 58.007. NISD may not withhold these documents under section 552.101 in conjunction with section 58.007.

Section 552.101 also encompasses section 261.201 of the Family Code, which provides in relevant part:

(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). Upon review, we find that documents AG-0001 through AG-0004 and AG-0022 through AG-0024 consist of reports involving alleged child abuse or neglect and were created pursuant to an abuse or neglect investigation as defined in section 261.001. *See id.* § 261.001(1), (4) (defining “child abuse” and “neglect” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under 18 years of age). Therefore, this information falls within the scope of section 261.201. You have not indicated that the district has adopted a rule governing the release of this type of information. Therefore, we conclude that documents AG-0001 through AG-0004 and AG-0022 through AG-0024 are confidential under section 261.201 of the Family Code. *See Open Records*

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<sup>2</sup>As our ruling is dispositive with regard to these documents, we need not address your argument under section 552.108(a)(2) against disclosure of documents AG-0005 through AG-0010.

Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the district must withhold these documents under section 552.101 of the Government Code.<sup>3</sup>

Section 552.108(a)(2) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if 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[.]” Gov’t Code § 552.108(a)(2). Section 552.108(a)(2) is applicable only if the information at issue relates to a concluded criminal case that did not result in a conviction or a deferred adjudication. A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information that the governmental body seeks to withhold. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that documents AG-0020 and AG-0021 relate to a concluded criminal investigation that did not result in conviction or deferred adjudication. Based on this representation and our review, we conclude that section 552.108(a)(2) is generally applicable to this information.

However, 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 Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e.*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, the district may withhold documents AG-0020 and AG-0021 under section 552.108(a)(2) of the Government Code.

Finally, we note that portions of the submitted information are subject to section 552.130 of the Government Code, which excepts from disclosure information related to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state.<sup>4</sup> *See* Gov’t Code § 552.130(a)(1), (2). Therefore, pursuant to section 552.130, NISD must withhold all Texas driver’s license numbers contained within the submitted information.<sup>5</sup>

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<sup>3</sup>As our ruling is dispositive with regard to these documents, we need not address your argument under section 552.108(a)(1) against disclosure of this information.

<sup>4</sup>The Office of the Attorney General will raise a mandatory exception, such as section 552.130, on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

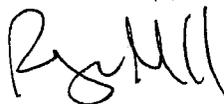
<sup>5</sup>The submitted information also contains social security numbers belonging to persons other than the requestor. We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act.

In summary, the district: (1) must withhold documents AG-0005 through AG-0016 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code, (2) must withhold documents AG-0001 through AG-0004 and AG-0022 through AG-0024 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, (3) may withhold, with the exception of basic information, which it must release, documents AG-0020 and AG-0021 under section 552.108(a)(2) of the Government Code, (4) must redact Texas driver's license numbers pursuant to section 552.130 of the Government Code, and (5) must release the remainder of the information at issue to the requestor.

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,



Ryan T. Mitchell  
Assistant Attorney General  
Open Records Division

RTM/jb

Ref: ID# 339091

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)