



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 11, 2010

Ms. Carolyn M. Hanahan  
General Counsel  
Fort Bend Independent School District  
16431 Lexington Boulevard  
Sugar Land, Texas 77479

OR2010-08555

Dear Ms. Hanahan:

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# 382328.

The Fort Bend Independent School District (the "district") received a request for information relating to a named district police officer. You claim 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.

Initially, we note the requestor does not seek L-2 and L-3 forms, family member and marital status information, personal financial information, medical records, fingerprints, military records, birth certificates, test questions and answers, emergency contacts, social security numbers, dates of birth, home addresses, home telephone numbers, and driver's license numbers. Therefore, any such information is not responsive to the present request. The district need not release nonresponsive information in response to this request, and this ruling will not address such information.

Next, we note you have submitted information relating to one complaint involving the officer. The requestor seeks the application, awards, training, reprimands, complaints, disciplinary actions, performance evaluations, educational background, promotions, professional qualifications and other information relating to the officer. Accordingly, to the extent any additional information responsive to the request existed on the date the district received the request, we assume you have released it. If the district has not released any such

information, it must do so at this time. *See id.* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

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 information protected by other statutes, such as section 58.007 of the Family Code, which provides in 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 Subchapters B, D, and E.

Fam. Code § 58.007(c); *see id.* § 51.03(a)–(b) (defining “delinquent conduct” and “conduct indicating need for supervision” for purposes of title 3 of Family Code). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). Upon review, we agree a portion of the submitted information consists of law enforcement records and files involving juvenile suspects. The district must therefore withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>1</sup> However, the remaining submitted information consists of an internal affairs investigation. The internal affairs investigation records do not consist of juvenile law enforcement records for purposes of section 58.007. Therefore, none of the remaining submitted information is confidential under section 58.007(c) of the Family Code, and the district may not withhold it under section 552.101 of the Government Code on that basis.

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<sup>1</sup> As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.101 also encompasses the common-law right of privacy. Common-law privacy 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. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has determined that common-law privacy generally protects the identities of juvenile offenders, *see* Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007(c), and the identities of juvenile victims of abuse or neglect, *see* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we determine the identifying information of the juvenile victim and suspects, which we have marked, is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy.

You raise section 552.108 of the Government Code for the remaining information. 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: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). Generally, 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), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The remaining submitted information relates to an internal affairs investigation conducted by the district police department. Section 552.108 is generally not applicable to information relating to an administrative investigation that did not result in a criminal investigation or prosecution. *See Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution); *see also* Open Records Decision No. 350 at 3-4 (1982). You have not explained, and the information does not reflect, the internal administrative investigation resulted in a criminal investigation or prosecution. Accordingly, the district may not withhold any portion of the remaining information under section 552.108(a)(1) of the Government Code.

We note a portion of the remaining information is subject to section 552.130 of the Government Code. Section 552.130 provides that information relating to a motor vehicle operator’s license or driver’s license issued by a Texas agency is excepted from public release. Gov’t Code § 552.130(a)(1). Upon review, we find the district must withhold the Texas driver’s license number we have marked under section 552.130 of the Government Code.<sup>2</sup>

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<sup>2</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with Section 58.007 of the Family Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the Texas driver's license number we have marked under section 552.130 of the Government Code. 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, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison  
Assistant Attorney General  
Open Records Division

MTH/sdk

Ref: ID# 382328

Enc. Submitted documents

c: Requestor  
(w/o enclosures)