



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 6, 2010

Mr. Justin R. Graham
Abernathy, Roeder, Boyd & Joplin, P.C.
For Mansfield Independent School District
P.O. Box 1210
McKinney, Texas 75070-1210



OR2010-09859

ATTORNEY GENERAL OF TEXAS
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Dear Mr. Graham:

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# 385588.

The Mansfield Independent School District (the "district"), which you represent, received a request for a specified police report. You state you will release some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. You also state the district notified individuals whose information is at issue of the request and of their right to submit arguments to this office as to why the requested information should not be released. Gov't Code § 552.304 (interested party may submit comments stating why the information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

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Initially, we note the district has redacted student-identifying information in the submitted report pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. However, FERPA is not applicable to law enforcement records maintained by the district's police department (the "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, .8. The submitted incident report consists of law enforcement records prepared by the department. Thus, the submitted incident report is not subject to FERPA, and no portion of it may be withheld on that basis.

Next, we note the submitted information contains court-filed documents. These documents are subject to section 552.022(a)(17) of the Government Code, which provides that "information that is also contained in a public court record" is "public information and not

excepted from required disclosure under this chapter unless [it is] expressly confidential under other law[.]” Gov’t Code § 552.022(a)(17). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception within the Act and not “other law” that makes information confidential. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 586 (1991) (governmental body may waive section 552.108). Therefore, the district may not withhold the court-filed documents under section 552.108. You also claim section 552.135 of the Government Code, which is “other law” for the purposes of section 552.022. The common-law informer’s privilege, which you claim under section 552.101 of the Government Code, is also other law that makes information confidential for the purposes of section 552.022.¹ *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *Tex. Comm’n on Envtl. Quality v. Abbott*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). However, upon review, the information at issue does not contain the identity of an informer. Therefore, none of the information subject to section 552.022(a)(17) may be withheld under these bases. We note, however, that the court documents contain information that is subject to section 552.130 of the Government Code, which also constitutes “other law” for the purposes of section 552.022.²

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a Texas agency is excepted from public release.³ Gov’t Code § 552.130(a)(1), (2). We have marked information in the information subject to section 552.022 of the Government Code that the district must withhold under section 552.130 of the Government Code.

We next address your claim under section 552.108 of the Government Code for the information not subject to section 552.022. 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 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). You explain the

¹Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101.

²The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

³We 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.

information at issue relates to an investigation by the department that concluded. You further explain that the investigation did not result in a conviction or deferred adjudication. Based on your representation and our review, we agree section 552.108(a)(2) is applicable to this information.

As you acknowledge, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *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. per curiam*, 536 S.W.2d 559 (Tex. 1976). You claim because the investigation at issue did not result in an arrest, the information at issue does not contain basic information. However, the question of whether basic information exists is not dependant on whether an offense ended in arrest. *See generally* Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information in an offense report deemed public by *Houston Chronicle*). Although it may not be withheld under section 552.108, basic information may be withheld if it is excepted from disclosure by another exemption in the Act. You claim the identities of the victim and witnesses must be withheld under sections 552.101 and 552.135 of the Government Code. Basic information in an offense report does not, however, include the identities of victims or witnesses. *Id.* at 4. Thus, with the exception of basic information, the remaining information, including the identities of the victim and witnesses, may be withheld under section 552.108(a)(2). However, basic information does include the identity of the complainant. *Id.* Therefore we will consider your arguments to withhold the complainant's identity under sections 552.101 and 552.135.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. The common-law informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). This privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). You state the complainant reported a possible violation of the law to the department, which we understand to have the authority to enforce criminal law. The submitted information does not indicate the suspect knows the identity of the complainant. Thus, we conclude that the district may withhold the complainant's identity, which we marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.⁴

⁴As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

In summary, with the exception of the marked information that must be withheld under section 552.130 of the Government Code, the district must release the court documents that are subject to section 552.022(a)(17) of the Government Code.⁵ With the exception of basic information, the district may withhold the remaining information under section 552.108(a)(2) of the Government Code. The district may withhold the information we marked under section 552.101 of the Government Code in conjunction with the informer's privilege from the basic information. The remaining basic 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, 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/dls

Ref: ID# 385588

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵We note that the court documents contain a partial social security number. 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.