



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2010

Ms. Leila Feldman  
General Counsel  
Fort Bend Independent School District  
16431 Lexington Boulevard  
Sugar Land, Texas 77479

OR2010-17080

Dear Ms. Feldman:

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# 399728.

The Fort Bend Independent School District (the "district") received a request from an investigator with the Texas Education Agency (the "TEA") for information pertaining to a named individual and specified 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.

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. This section encompasses 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). 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). In order for section 58.007(c) to apply, a child must be identified in the information at issue as a suspect or offender. *See id.* § 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(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party. Upon review, we find none of the submitted information identifies a juvenile suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for purposes of this section. Therefore, we conclude you have failed to establish section 58.007(c) is applicable to the submitted information, and it may not be withheld under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses information protected by section 261.201(a) of the Family Code, which provides as follows:

(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, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

*Id.* § 261.201(a). You state the submitted information was used or developed in an investigation of an alleged injury to a child. *See id.* § 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261); *see also* Penal Code § 22.04(c) (defining “child” for purposes of injury to a child as a person 14 years of age or younger). We note that the district’s police department is an agency authorized to conduct a chapter 261 investigation. *See* Fam. Code § 261.103 (listing agencies that may conduct child abuse investigations). Based on your representations and our review, we find the submitted information is within the scope of section 261.201. You have not indicated the district police department has

adopted a rule that governs the release of this type of information; therefore, we assume that no such regulation exists. It does not appear any of the exceptions in section 261.201 apply. Given that assumption, we conclude the submitted information is generally confidential under section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Section 261.201(a) provides, however, that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” Fam. Code § 261.201(a).

We note section 22.082 of the Education Code constitutes “applicable state law” in this instance. Section 22.082 of the Education Code provides the TEA “may obtain from any law enforcement or criminal justice agency all criminal history record information and all records contained in any closed criminal investigation file that relate to a specific applicant for or holder of a certificate issued under Subchapter B, Chapter 21.” Educ. Code § 22.082. The requestor, an investigator with the TEA, claims section 22.082 gives the State Board for Educator Certification (the “SBEC”) a right to the requested information and indicates that the requested information is related to an SBEC investigation of an individual who has applied for or currently holds educator credentials.<sup>1</sup> TEA assumed the duties of the SBEC.<sup>2</sup> You state the case is closed. Thus, as the information at issue consists of a closed criminal investigation that relates to a specific applicant for or holder of a certificate under subchapter B, chapter 21 of the Education Code, section 22.082 authorizes the requestor to obtain the submitted information in its entirety.

However, section 261.201(a) states that the release must be “for purposes consistent with the Family Code.” *See* Fam. Code § 261.201(a). This office cannot determine whether release of the information is consistent with the Family Code. Consequently, if the district determines that release of the information is consistent with the Family Code, section 261.201 does not prohibit the release of the information to the requestor in this case.<sup>3</sup>  
*Id.*

If, however, the district determines that release is not consistent with purposes of the Family Code, the district must withhold the information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of

---

<sup>1</sup>The requestor also claims a right to the information at issue under sections 261.308 and 261.406 of the Family Code. These statutes, however, apply to information held by the Department of Family and Protective Services and not the district. *See* Fam. Code §§ 261.308, .406.

<sup>2</sup>The 79th Texas legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to TEA, effective September 1, 2005.

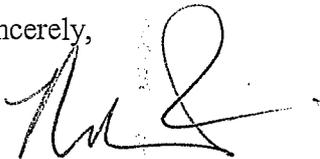
<sup>3</sup>Although the district contends that the submitted information is also excepted under section 552.108 of the Government Code, this office has found specific statutory right of access provisions prevail over general exceptions to disclosure under the Act. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). Accordingly, we do not address your argument under section 552.108 for the submitted information.

information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); Fam. Code § 261.201(b)-(g), (i), (k) (listing circumstances under which section 261.201 information can 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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/em

Ref: ID# 399728

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)