



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 22, 2010

Ms. Ylise Janssen  
Senior School Law Attorney  
Office of the General Counsel  
Austin Independent School District  
1111 West Sixth Street, Room A-240  
Austin, Texas 78703-5399

OR2010-17663

Dear Ms. Janssen:

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# 401060.

The Austin Independent School District (the "district") received a request for all audio and video recordings of employee interactions at the district's police communications center during a specified period of time. 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 information protected by other statutes. Section 58.003 of the Family Code generally provides that a court may seal certain juvenile records. *See* Fam. Code § 58.003(a). However, you do not inform us that the requested information has been ordered sealed. Therefore, the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.003 of the Family Code.

Section 552.101 also encompasses 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.

*Id.* § 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 do not find, and you do not demonstrate, any 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.

You next assert that the submitted video recordings must be withheld under section 552.101 because they contain criminal history record information (“CHRI”) made confidential under sections 411.0845 and 411.097 of the Government Code. These sections restrict access to CHRI, which is defined in section 411.082 as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). You state the submitted video recordings contain images of the computer which displays criminal history background checks. Upon review, however, we find the submitted video recordings do not contain any CHRI. Accordingly, we conclude sections 411.0845 and 411.097 are inapplicable to the submitted video recordings, and no information may be withheld on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *Id.* at 681-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also determined common-law

privacy protects the identifying information of juvenile offenders. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.007. Upon review, however, we find you have failed to demonstrate how any of the submitted information is highly intimate or embarrassing and not of legitimate public interest. Therefore, the district may not withhold any of the submitted information under section 552.101 on the basis of common-law privacy.

Section 552.108 of the Government Code provides in pertinent part as follows:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution. Section 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this State." *City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.). To prevail on its claim that section 552.108(b)(1) excepts information from disclosure, a governmental body must do more than merely make a conclusory assertion that releasing the information would interfere with law enforcement. Instead, the governmental body must meet its burden of explaining how and why release of the requested information would interfere with law enforcement and crime prevention. *See* Open Records Decision No. 562 at 10 (1990) (construing statutory predecessor). In addition, generally known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under law enforcement exception), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known). The determination of whether the release of

particular records would interfere with law enforcement is made on a case-by-case basis. *See* Open Records Decision No. 409 at 2 (1984) (construing statutory predecessor).

You generally state the submitted audio recordings relate to ongoing criminal investigations by the district's police department, and you have submitted an affidavit from the district's police department stating the requested information "may contain images of cases undergoing active investigation." However, you have not identified which information pertains to pending criminal investigations. *See* Gov't Code § 552.301(e)(2) (governmental body must label copy of requested information to indicate which exceptions apply to which parts of the information). Further, although you generally state "release of the information would interfere with the investigation of alleged crimes," you have not shown how the release of the submitted audio recordings would interfere with the detection, investigation, or prosecution of crime. Consequently, the district may not withhold the information at issue under either section 552.108(a)(1) or section 552.108(b)(1) of the Government Code. As you raise no further exceptions, the submitted 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,



Sarah Casterline  
Assistant Attorney General  
Open Records Division

SEC/eeg

Ref: ID# 401060

Enc. Submitted documents

c: Requestor  
(w/o enclosures)