



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 23, 2011

Ms. Tricia McKinney  
Public Information Specialist  
Katy Independent School District  
P. O. Box 159  
Katy, Texas 77492

OR2011-02721

Dear Ms. McKinney:

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# 409842 (Katy PIR # 10262-70).

The Katy Independent School District (the "district") received a request for any police or incident reports regarding a 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 claimed exceptions 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code. This section provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report;

or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k)-(l). You state the submitted information was developed in an investigation by the district's police department of alleged child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code); *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). Upon review, we find that the submitted information is generally confidential under section 261.201(a) of the Family Code.

However, the requestor is a parent of the child who is the subject of the report, and the parent is not alleged to have committed the suspected abuse. The district thus may not use section 261.201(a) to withhold the requested information from this requestor. *Id.* § 261.201(k). However, section 261.201 does require that the identity of the reporting party be redacted before a parent may inspect the record. *Id.* § 261.201(1)(3). In addition, section 261.201 provides that any information otherwise excepted from required disclosure under the Act or other law may be withheld from disclosure. *Id.* § 261.201(1)(2). Accordingly, we will consider your remaining arguments against disclosure.

Section 552.101 also encompasses section 58.007 of the Family Code, which protects juvenile law enforcement records. This section 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). For purposes of section 58.007(c), "child" means a person who is ten years of age or older and under seventeen years of age. *See id.* § 51.02(2). The submitted information states that the juvenile suspect was seven years old at the time of the incident. Because the legislature has chosen to protect only the law enforcement records of a child who is between the ages of ten and sixteen at the time of the reported conduct, we find the information at issue is not confidential under section 58.007(c) of the Family Code. *See* Open Records Decision No. 478 at 2 (1987) (language of confidentiality statute controls scope of protection). Therefore, no portion of the submitted report may be withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.108(a)(2) provides, in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) 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). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). You state that the submitted information pertains to an investigation in which no charges were filed, and therefore did not end in conviction or deferred adjudication. Based on your representation and our review, we find that section 552.108(a)(2) applies to the submitted 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). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (summarizing types of information considered to be basic information), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976). We note, however, that section 261.201 of the Family Code requires the identity of the reporting party be withheld prior to releasing the report to the parent. *See* Fam. Code § 261.201(1)(3). Thus, with the exception of basic information, the district may withhold the submitted information under section 552.108(a)(2) of the Government Code.<sup>1</sup> However, in releasing the basic information, the district must withhold the identity of the reporting party under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.

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<sup>1</sup>As noted, the requestor in this instance has a special right of access under section 261.201(k) of the Family Code to the information being released. Accordingly, should the district receive another request for this information from someone without such a right of access, the district should again request an opinion from this office.

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,



Misty Haberer Barham  
Assistant Attorney General  
Open Records Division

MHB/eeg

Ref: ID #409842

Enc. Submitted documents

c: Requestor  
(w/o enclosures)