



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 14, 2011

Mr. D. Craig Wood
Walsh, Anderson, Brown, Gallegos and Green, P.C.
For Northside Independent School District
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2011-03499

Dear Mr. Wood:

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# 411126.

The Northside Independent School District (the "district"), which you represent, received a request for: (1) transcripts and audio recordings of all incoming 9-1-1 calls and dispatch recordings between the San Antonio Police Department and the district's police department relating to a specified incident, including a listing of phone numbers from which the calls were made, and (2) all dispatch recordings involving a named district police officer on a specified date. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (interested party may submit comments to this office stating why the information at issue should or should not be released).

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 section 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that

occurred on or after September 1, 1997.¹ Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(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.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Id. § 58.007(c), (e), (j), 51.02(2) (defining child for purposes of section 58.007 as a person who is ten years of age or older and under seventeen years of age). Juvenile law enforcement records relating to delinquent conduct by a child or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c). *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision”). Upon review, we find audio files 02238596, 02238597, 02238599, 02238605, 02238607, 02238608, 02238612, 02239060, 02239062, 02239063, 02239064, 02239066, 02239067, and 02239068 relate to juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. Accordingly, these audio files must be withheld under section 552.101 in conjunction with section 58.007(c) of the Family Code. Additionally, we find all of the audio files pertaining to case 2010111137 relate to a juvenile suspect or offender who is deceased. Although a juvenile suspect or offender is deceased, section 58.007 is not solely intended to protect the privacy interests of juveniles. Therefore, the juvenile offender’s death in this case does not remove information relating to the deceased juvenile from the ambit of section 58.007(c). In this instance, however, the requestor is a representative of the deceased juvenile’s parent, and section 58.007(e) gives the requestor access to these particular law enforcement records. *Id.* § 58.007(e). Nonetheless, before the requestor is permitted to inspect or copy these records, information subject to any other exception under the Act or other law must be redacted. *See id.* § 58.007(j)(2). You assert section 552.103 of the Government Code, so we will address your arguments under that exception.

Section 552.103 of the Government Code provides, in relevant part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person’s office or employment, is or may be a party.

...

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov’t Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) applies in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date the district received the request for information, and (2) the information at issue is related to that litigation. *Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481

(Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

The question of whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish concrete evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture.² *Id.* The fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

You argue the requestor is an attorney representing the parent of a student who was killed in a confrontation with a district police officer. You further state the information requested directly relates to that incident and potential criminal activity on the part of the student and the officer. However, you have failed to submit any additional arguments showing any party has taken any objective steps towards litigation against the district. Accordingly, we conclude the district has failed to demonstrate it reasonably anticipated litigation on the date the district received the request at issue. Thus, the district may not withhold any of the submitted information under section 552.103 of the Government Code.

Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (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 established. *Id.* at 681–82. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required disclosure under common-law privacy. *See* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find audio file 02238568 contains references to information protected by common-law privacy. Therefore, the district must withhold the portion of the audio from :02 to :04 in audio file 02238568 under section 552.101 of the Government Code in conjunction with common-law privacy.

²This office has concluded that litigation was reasonably anticipated when the potential opposing party hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982), and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981). Further, this office has concluded that a governmental body's receipt of a claim letter that it represents to be in compliance with the notice requirements of the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code is sufficient to establish that litigation is reasonably anticipated. *See* Open Records Decision No. 638 at 4 (1996).

We note audio files 02239160, 02239035, and 02239039 contain personal information that might be subject to section 552.117(a)(2) of the Government Code. Section 552.117(a)(2) excepts from public disclosure a peace officer's home address and telephone number, social security number, and family member information regardless of whether the peace officer made an election under section 552.024 of the Government Code. Gov't Code § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. It is unclear whether the individuals whose personal information is at issue are currently licensed peace officers, as defined by article 2.12 of the Code of Criminal Procedure. Therefore, to the extent these individuals are licensed peace officers, the district must withhold their personal information within these audio clips under section 552.117(a)(2) of the Government Code.

If the individuals at issue are not currently licensed peace officers, then the personal information at issue might be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Therefore, to the extent the individuals at issue timely requested confidentiality under section 552.024, the district must withhold the personal information in audio files 02239160, 02239035, and 02239039 under section 552.117(a)(1). Additionally, we note audio files 02238462 and 02238991 contain district employees' cellular telephone numbers. To the extent the employees made timely elections under section 552.024 and the cellular telephone numbers are paid for with personal funds, the district must withhold this information under section 552.117(a)(1) of the Government Code. Conversely, to the extent the individuals at issue did not make a timely election under section 552.024 or the cellular telephone service was not paid for with personal funds, the district may not withhold the information at issue under section 552.117(a)(1) of the Government Code.

Section 552.130 excepts from disclosure information related to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130(a)(1), (2). Upon

review, we find audio files 02238421, 02238425, 02238555, 02238565, 02238568, 02238570, 02238679, 02238785, 02238814, 02238901, 02238950, 02238958, 02238960, 02238970, 02239014, 02239018, 02239019, 02239020, 02239022, and 02239108 contain audible references to Texas motor vehicle record information. Thus, the district must withhold the portions of these recordings that contain Texas motor vehicle record information under section 552.130 of the Government Code.³

In summary, the district must withhold audio files 02238596, 02238597, 02238599, 02238605, 02238607, 02238608, 02238612, 02239060, 02239062, 02239063, 02239064, 02239066, 02239067, and 02239068 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The district must withhold the portion of the audio from :02 to :04 in audio file 02238568 under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the personal information in audio files 02239160, 02239035, and 02239039 under section 552.117(a)(2) of the Government Code to the extent the information relates to a peace officer employed by the district. To the extent the information relates to an individual who is not a licensed peace officer but a current or former employee who made a timely election under section 552.024, the district must withhold the personal information in audio files 02239160, 02239035, and 02239039, and the cellular telephone numbers in audio files 02238462 and 02238991 if the cellular services were paid for with personal funds, under section 552.117(a)(1) of the Government Code. The district must withhold those portions of audio files 02238421, 02238425, 02238555, 02238565, 02238568, 02238570, 02238679, 02238785, 02238814, 02238901, 02238950, 02238958, 02238960, 02238970, 02239014, 02239018, 02239019, 02239020, 02239022, and 02239108 that reference Texas motor vehicle record information under section 552.130 of the Government Code. We note that if the district lacks the technical capability to redact only those pieces of excepted information from the submitted audio files, it must withhold the entirety of those audio files in which the specific information is referenced. *See* Open Records Decision No. 364 (1983). The remaining information must be released.⁴

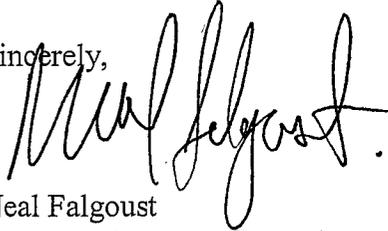
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

³We note this office has 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 and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision.

⁴We note that because the requestor has a right of access to some of the information being released under section 58.007(e) of the Family Code, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.

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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/dls

Ref: ID# 411126

Enc. Submitted documents

c: Requestor
(w/o enclosures)