



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 19, 2011

Mr. Robert Russo
Walsh, Anderson, Gallegos and Green, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2011-05460

Dear Mr. Russo:

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# 414955.

The Northside Independent School District (the "district"), which you represent, received a request for "Northside police reports regarding incidents or alleged incidents of sexual assault, sexual misconduct, sexual harassment, indecency with a child, and inappropriate relations with a student/minor involving" a district employee from January 1, 2010, to the present. You claim the submitted reports are excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted records are heavily redacted. You state the district redacted this information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The submitted records are law enforcement records created and maintained by the district's police department (the "department"). FERPA is not applicable to law enforcement records maintained by 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. Accordingly, the reports are not education records subject to FERPA and the district was not authorized to submit this information to this office in redacted form. In this instance, being deprived of the redacted information does not inhibit our ability to make a ruling. Thus, we will address the applicability of the claimed exceptions to the reports.

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, such as section 261.201(a) of the Family Code, which provides:

(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.

Fam. Code § 261.201(a). Report numbers 2010100841, 2010081145, and 2010010971 reflect they were used or developed by the department in its investigations of alleged child abuse. *See id.* § 261.001(1)(E) (definition of "abuse" includes "sexual conduct harmful to a child's mental, emotional, or physical welfare," and indecency with a child, sexual assault, and aggravated sexual assault under Penal Code sections 21.11, 22.011, and 22.021); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Thus, we find these reports are within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, the district must withhold report numbers 2010100841, 2010081145, and 2010010971 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).¹

Section 552.101 also encompasses the doctrine of common-law privacy. Common-law privacy 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 established. *Id.* at 681-82. You claim report numbers 2011011083,

¹As our ruling for these reports is dispositive, we need not address your arguments against their disclosure.

2011010075, and 2011011408 are protected under common-law privacy because releasing these reports would stigmatize the district employees accused of engaging in sexual misconduct with students. As you acknowledge, however, these reports pertain to the department's investigations of employee misconduct. This office has determined that common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978). Furthermore, we note section 552.101 does not encompass the doctrine of false-light privacy, which concerns whether the release of information would place a person in a false light in the public eye. *See* Open Records Decision No. 579 at 7-8 (1990) (attorney general could not conclude that legislature intended for statutory predecessor to section 552.101 to encompass doctrine of false-light privacy); *see also* Open Records Decision No. 408 at 11 (1984) (fact that the allegations were found untrue could easily be released with the allegations themselves, mitigating harm). Thus, we find the public has a legitimate interest in the information concerning the employees' alleged misconduct. We therefore conclude the district may not withhold report numbers 2011011083, 2011010075, and 2011011408 under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.108(a)(1) 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 . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You represent that report numbers 2011011083, 2011010075, and 2011011408 pertain to on-going investigations being conducted by the department. Based on your representations and our review, we conclude the release of these reports would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

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). Section 552.108(c) refers to the basic front-page information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Basic information includes the identification and description of the complainant, the arrestee's address, and a detailed description of the offense. *See id.* Therefore, with the exception of basic information, the district may withhold report numbers 2011011083, 2011010075, and 2011011408 under section 552.108(a)(1) of the Government Code. However, you seek to withhold some of the basic information from disclosure. Accordingly, we will address your arguments under these exceptions.

Section 552.135 of the Government Code provides, in relevant part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135(a)-(b). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.301(e)(1)(A), .135(a). As noted above, basic information includes the identification and description of the complainant. We find the district employees who reported the allegations to the department are the complainants. You do not indicate that any of the exceptions in section 552.135(c) apply. *See id.* § 552.135(c) (listing exceptions to section 552.135(b) of the Government Code). Therefore, in releasing basic information, we conclude the district must withhold the marked names and titles of the complainants under section 552.135 of the Government Code.

As previously noted, basic information also includes an arrestee's address. You indicate that the district will withhold employee home addresses under section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. *See id.* § 552.117(a)(1). However, the protections of section 552.117 apply only to information that a governmental body holds in its capacity as an employer. *See id.* § 552.117 (providing that employees of governmental entities may protect certain personal information in hands of their employer); *see also id.* § 552.024 (establishing election process for section 552.117). The submitted records are maintained by the department in a law enforcement capacity. Because the district is not maintaining these records as an employer, no portion of the basic information, including the arrestees' home addresses, in report numbers 2011011083, 2011010075, and 2011011408 is excepted under section 552.117 of the Government Code. Accordingly, the address of the arrestee listed in report number 2011011408 is basic information that may not be withheld under section 552.117. Furthermore, if the employees accused of the misconduct in report numbers 2011011083 and 2011010075 were arrested, their addresses are basic information that may not be withheld under section 552.117. If these employees were not arrested, their home addresses are not basic information and may be withheld under section 552.108(a)(1) of the Government Code.

In summary, the district must withhold report numbers 2010100841, 2010081145, and 2010010971 in their entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, report numbers 2011011083, 2011010075, and 2011011408 may be withheld under section 552.108(a)(1) of the Government Code. In releasing basic information from report numbers 2011011083, 2011010075, and 2011011408, the district must withhold the marked complainant information under section 552.135 of the Government Code. The address of the arrestee in report number 2011011408 must be released as basic information. Furthermore, if the employees accused of misconduct in report numbers 2011011083 and 2011010075 were arrested, their addresses must be released as basic information. If these employees were not arrested, their addresses may be withheld under section 552.108(a)(1).

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/eeg

Ref: ID# 414955

Enc. Submitted documents

c: Requestor
(w/o enclosures)