



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 5, 2011

Ms. Claire E. Swann
Counsel for Mansfield Independent School District
Abernathy, Roeder, Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2011-09486

Dear Ms. Swann:

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# 422505.

The Mansfield Independent School District (the "district"), which you represent, received a request for information pertaining to a specified incident involving the requestor's son. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. You also state, and provide documentation showing, the district notified interested parties of the request for information and of their right to submit arguments to this office as to why the submitted information should not be released.¹ See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state the district will redact student-identifying information in the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. See 20 U.S.C. § 1232g. FERPA, however, is not applicable to law enforcement records maintained by the district's police department (the "department") that were created by the department for a law enforcement

¹As of the date of this letter, we have not received any arguments from the interested individuals regarding the information at issue.

purpose. *See id.* § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted arrest report and related records consist of law enforcement records maintained by the department. Thus, the submitted information is not subject to FERPA, and no portion of it may be withheld on that basis.

Next, we note the submitted information contains documents filed with the court. A document that has been filed with a court is expressly public under section 552.022 of the Government Code and may not be withheld unless it is confidential under other law. *See Gov't Code* § 552.022(a)(17). Although you assert this information is excepted under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived by the governmental body. *See Open Records Decision No. 177 (1977)* (governmental body may waive statutory predecessor to section 552.108). Therefore, section 552.108 does not constitute other law for purposes of section 552.022(a)(17). Accordingly, the district may not withhold the court-filed documents, which we have marked, under section 552.108. You also claim sections 552.101 and 552.135 of the Government Code, which are "other law" for purposes of sections 552.022. Section 552.135 excepts from disclosure information that would substantially reveal the identity of a school district informer. The common-law informer's privilege is also other law that makes information confidential for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001); *Tex. Comm'n on Env'tl. Quality v. Abbott*, No. GV-300417 (126th Dist. Ct., Travis County, Tex.). However, upon review, the information at issue does not contain the identity of an informer. Therefore, none of the information subject to section 552.022(a)(17) may be withheld under these bases. However, we will address your remaining claim under section 552.101 for the information subject to section 552.022, as well as your claims for the information not subject to section 552.022.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Gov't Code* § 552.101. This exception encompasses information that other statutes make confidential. We understand the district to raise section 552.101 in conjunction with 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.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of Fam. Code tit. 3). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. The district has not demonstrated, and it does not otherwise appear to this office, that the submitted information involves a suspect or offender who was less than 17 years of age at the time of the incident to which the information pertains. We therefore conclude that the district may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Next, you claim the remaining information is excepted from disclosure under section 552.108(a)(1) of the Government Code, which excepts “[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). Generally, a governmental body claiming section 552.108(a)(1) 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 state the remaining information at issue relates to an open and active criminal case. Based upon your representation and our review, we conclude that the release of the remaining information at issue 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). Thus, section 552.108(a)(1) is generally applicable to the remaining information.

However, basic information about an arrested person, an arrest, or a crime is not excepted from disclosure under section 552.108. Gov’t Code § 552.108(c). Such basic information, including the identity of the complainant, refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-8; *see also* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of basic information, which must be released, the district may withhold

the remaining information under section 552.108(a)(1).² However, you seek to withhold the name of the complainant in the basic information under section 552.101 of the Government Code in conjunction with the informer's privilege and section 552.135. Accordingly, we will consider your arguments under these exceptions.

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. The common-law informer's privilege, incorporated into the Act by section 552.101, has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). This privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). You state the complainant reported a possible violation of the law to the department, which we understand to have the authority to enforce criminal law. The submitted information does not indicate the offender knows the identity of the complainant. Thus, we conclude that the district may withhold the complainant's identity, which we marked, under section 552.101 of the Government Code in conjunction with the common-law informer's privilege.³

In summary the court filed documents must be released pursuant to section 552.022(a)(17) of the Government Code. With the exception of basic information, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code. The district may withhold the information we marked under section 552.101 of the Government Code in conjunction with the informer's privilege from the basic information. The remaining basic 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, 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

²As our ruling is dispositive, we need not address your remaining arguments against disclosure for the identities of the victim and witnesses.

³As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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,

A handwritten signature in black ink that reads "Paige Lay". The signature is written in a cursive, flowing style.

Paige Lay
Assistant Attorney General
Open Records Division

PL/eb

Ref: ID# 422505

Enc. Submitted documents

cc: Requestor
(w/o enclosures)