ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 17, 2012

Ms. Ylise Janssen
Senior School Law Attorney
Austin Independent School District
1111West Sixth Street
Austin, Texas 78703

OR2012-05467

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# 450914.

The Austin Independent School District (the "district") received a request for a specified incident report. You claim 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.

Initially, we note a portion of the submitted information, which we have marked, is not responsive to the instant request because it was created after the request was received by the district. This ruling does not address the public availability of the information that is not responsive to the request, and the district is not required to release this information in response to this request.

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 made confidential by other statutes, including section 261.201 of the Family Code, which 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:
>
> > . . .
> >
> > (2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law; and
> >
> > (3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2)-(3). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, you explain, and provide documentation showing, the submitted information consists of files, reports, and records used or developed in an investigation of suspected child abuse by the district's police department. Thus, the submitted information is generally confidential under section 261.201 of the Family Code. *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). However, the requestor is a parent of the child victim listed in the report and is not alleged to have committed the alleged or suspected abuse. Therefore, the

submitted information may not be withheld from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). We note section 261.201(l)(3) provides that before a parent can copy and inspect a record of a child under 261.201(k), the identity of the party who made the report must be redacted. *Id.* § 261.201(l)(3). We also note section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). You assert the responsive information is excepted from public disclosure under section 552.108 of the Government Code. Accordingly, we address this argument for the responsive information.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). As noted, you state the responsive information relates to an investigation by the district's police department. You further explain the investigation is concluded and did not result in a conviction or a deferred adjudication. Based on your representations and our review, we conclude the district has demonstrated section 552.108(a)(2) is applicable to the responsive information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. *Id.* § 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), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See* Open Records Decision No. 127 (1976) (summarizing types of information deemed public by *Houston Chronicle*). Thus, with the exception of the basic information, the district may withhold the responsive information under section 552.108(a)(2) of the Government Code. As noted above, the identity of a party who makes a report of abuse or neglect must be withheld under section 261.201(l)(3). Gov't Code § 261.201(l)(3). Thus, in releasing the basic information, the district must withhold the reporting party's identifying information pursuant to section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code.[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

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[1]We note the requestor has a special right of access to the information being released in this instance. *See* Fam. Code § 261.201(k). Because such information is confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.

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,

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/em

Ref: ID# 450914

Enc. Submitted documents

c: Requestor
(w/o enclosures)