



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 21, 2012

Ms. Leanne Lundy
Counsel for Klein ISD
Rogers, Morris & Grocer, L.L.P.
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2012-07598

Dear Ms. Lundy:

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# 454637.

The Klein Independent School District (the "district"), which you represent, received a request for an offense report, witness statements, and video tapes regarding a specified incident involving the requestor's daughter. You state you will release some information to the requestor. 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 representative sample of information.¹

Initially, we must address the district's obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request.

¹We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

Gov't Code § 552.301(b). Section 552.301(e) requires a governmental body to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *Id.* § 552.301(e). You state the district received the request for information on February 27, 2012. *See id.* § 552.301(c) (stating a written request includes a request in writing that is sent to the officer for public information, or the person designated by that officer, by e-mail). We note the district sought and received clarification of the request on February 27, 2012. *See id.* § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed). You further state the district was closed for business March 12, 2012 through March 16, 2012. Accordingly, the district's ten-business-day deadline was March 19, 2012 and the district's fifteen-business-day deadline was March 26, 2012. However, you did not request a ruling from this office until March 20, 2012 and did not submit the information required by section 552.301(e) to this office until March 27, 2012. *See Gov't Code § 552.308* (deadline under the Act is met if document bears post mark indicating time within the deadline period). Accordingly, we find the district failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You raise section 552.108 as an exception to disclosure. Section 552.108 is a discretionary exception that protects a governmental body's interests and may be waived. *See Gov't Code § 552.007*; Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, the district's claim under section 552.108 is not a compelling reason to overcome the presumption of openness under section 552.302. However, you also raise section 552.101 as an exception to disclosure. As section 552.101 can provide a compelling reason to withhold information, we will consider its applicability to the submitted information.

Next, we note you have redacted social security numbers under section 552.147 of the Government Code. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b). In this instance, the requestor is a parent of one of the children whose social security numbers are at issue. Section 552.023 of the Government Code provides the requestor, as her child's authorized representative, a special right of access, beyond that of the general public, to information concerning her child that is protected from public disclosure by laws intended to protect the child's privacy interests. *See id.* § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself or person for whom she is authorized representative). Section 552.147 protects personal privacy. Therefore, the requestor has a right of access to her child's social security number and it may not be withheld from her on the basis of section 552.147(b) of the Government Code.

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 made confidential by other statutes, such as section 58.007 of the Family Code, which protects the law enforcement records of juveniles. Section 58.007 provides in pertinent part as follows:

(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.

Fam. Code § 58.007(c), (e), (j). 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 at the time the conduct occurred. *See id.* § 51.02(2). Juvenile law enforcement records relating to juvenile delinquent conduct 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(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Upon review, we find the submitted information involves children engaged in conduct indicating a need for supervision that occurred after September 1, 1997. As such, the submitted information is generally confidential under section 58.007(c) of the Family Code. However, the requestor is a parent of one of the juvenile offenders listed in the submitted information. Therefore, the requestor has a right to inspect law enforcement records concerning her child under section 58.007(e). *See id.* § 58.007(e). However, personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j)(1). For the purposes of section 58.007(j), we conclude a juvenile victim or witness is a person who is under eighteen years of age. Thus, the district must withhold information identifying other juvenile suspects and juvenile witnesses from the submitted report, which we have marked, under section 552.101 in conjunction with section 58.007(j)(1). The district must also withhold the submitted DVD under section 552.101 in conjunction with section 58.007(j)(1). We note we are unable to determine whether two of the witnesses in the submitted report were under eighteen years of age at the time of the incident at issue. Thus, if these witnesses were under eighteen years of age at the time of the incident at issue, the district must withhold their identifying information from the submitted report, which we have marked, under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. If not, the district may not withhold their identifying information on that basis. Pursuant to section 58.007(j)(2), the district must also withhold any information that is excepted from disclosure under chapter 552 or other law. Accordingly, we will address your remaining argument under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which 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 demonstrated. *Id.* at 681-82. The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. This office has also found some kinds of medical information or information indicating disabilities or specific illnesses are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Upon review, we find you have failed to demonstrate any of the remaining information is highly intimate or embarrassing and of no legitimate public concern. Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the district must withhold the information of juvenile offenders or witnesses other than the requestor's child we have marked in the submitted report as well as the submitted DVD under section 552.101 of the Government Code in conjunction with 58.007(j)(1) of the Family Code. The remaining information must be released.²

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,



Jessica Marsh
Assistant Attorney General
Open Records Division

JM/bhf

² As noted above, the requestor has a right of access to the information being released under section 58.007(e) of the Family Code. Because this information would be confidential with respect to the general public, if the district receives another request for this information from a different requestor it must again seek a ruling from this office.

Ref: ID# 454637

Enc. Submitted documents

c: Requestor
(w/o enclosures)