



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 29, 2012

Mr. Joe R. Tanguma
Counsel for the New Caney ISD
Walsh, Anderson, Gallegos, Green and Trevino, P.C.
10375 Richmond Avenue, Suite 750
Houston, Texas 77042-4196

OR2012-08078

Dear Mr. Tanguma:

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# 455373.

The New Caney Independent School District (the "district"), which you represent, received a request for all documents pertaining to a specified investigation conducted by the district's police department (the "department"). You claim the submitted information is excepted from disclosure under sections 552.108, 552.130, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2011-00534 (2011). In that ruling, this office determined, if the requestor was not the parent or guardian of the child victim, then the district must withhold the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor was the parent or guardian of the child victim, then with the exception of basic information, the district may withhold the information at issue under section 552.108(a)(1) of the Government Code, but must withhold the reporting party's identifying information under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code. However, we note the requestor now identifies himself as the parent of the child victim and the circumstances on which Open Records Letter No. 2011-00534 is based have changed as the investigation at issue is no longer pending. Therefore, the district may not rely on Open Records Letter No. 2011-00534 as a

previous determination for this information. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Accordingly, we will address your arguments against disclosure of the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”¹ Gov’t Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides in part:

(a) Except as provided by Section 261.203, the 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.

¹The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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 [the Act], 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, the submitted information consists of files, reports, and records used or developed in an investigation of suspected child abuse by the 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, as noted above, 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)(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 submitted information is excepted from public disclosure under sections 552.108, 552.130, and 552.135 of the Government Code. Accordingly, we will consider your arguments against disclosure of the submitted 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. 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). You state the submitted information relates to an investigation by the department that was referred to the Montgomery County District Attorney’s Office and was no-billed by the grand jury, and therefore, did not result in a conviction or deferred adjudication. Based on your representations and our review, we conclude the district has demonstrated section 552.108(a)(2) is applicable to the submitted 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 submitted information under section 552.108(a)(2) of the Government Code. However, we note section 261.201(l)(3) of the Family Code provides that the identity of a party who makes a report of abuse or neglect must be withheld under section 261.201(l)(3). Fam. 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.² As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/bhf

Ref: ID# 455373

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We 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.