



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2012

Ms. Pam Kaminsky  
Attorney  
Fort Bend Independent School District  
16431 Lexington Boulevard  
Sugar Land, Texas 77479

OR2012-13951

Dear Ms. Kaminsky:

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# 463765.

The Fort Bend Independent School District (the "district") received a request for a specified report. You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed 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."<sup>1</sup> 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:

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(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, the submitted information consists of records used or developed in an investigation of alleged or 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 section 261.201(k), the identity of the party who made the report of abuse must be redacted.

*Id.* § 261.201(1)(3). We also note section 261.201(1)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(1)(2). You assert the submitted information is excepted from public disclosure under section 552.108 of the Government Code. Accordingly, we address this argument for the submitted information.

Section 552.108 of the Government Code provides, in pertinent part, the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(2) it is information that the deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]

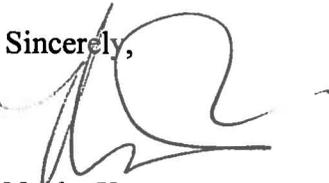
Gov't Code § 552.108(a)(2), (b)(2). A governmental body claiming subsections 552.108(a)(2) and 552.108(b)(2) must demonstrate the requested information relates to a criminal investigation that concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A). You state the "specific case is inactive, but has not resulted in a conviction or deferred adjudication[.]" You also state release of the information at issue could compromise the investigation and prosecution of a crime. We note subsections 552.108(a)(2) and 552.108(b)(2) are applicable only if the information at issue is related to a concluded criminal case "that did not result in conviction or deferred adjudication." *Id.* § 552.108(a)(2), (b)(2). Thus, having considered your representations, we find you have failed to demonstrate the applicability of subsection 552.108(a)(2) or subsection 552.108(b)(2) to the submitted information. Accordingly, the district may not withhold the submitted information under subsection 552.108(a)(2) or subsection 552.108(b)(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(1)(3) of the Family Code. Fam. Code § 261.201(1)(3). Thus, except for the reporting party's identifying information, which must be withheld pursuant to section 552.101 of the Government Code

in conjunction with section 261.201(1)(3) of the Family Code, the district must release the submitted information.<sup>2</sup>

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](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,



Nneka Kanu  
Assistant Attorney General  
Open Records Division

NK/bhf

Ref: ID# 463765

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>We note the requestor has a special right of access to the information being released in this instance. See Fam. Code § 261.201(k); Gov't Code § 552.023. 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.