ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 29, 2012

Mr. Steve Stanford
Director of Communications
Katy Independent School District
P.O. Box 159
Katy, Texas 77492-0159

OR2012-19218

Dear Mr. Stanford:

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# 476633.

The Katy Independent School District (the "district") received a request for records of the district's police department involving the requestor. You state some of the requested information has been released. 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 information you submitted.

We first note the district did not fully comply with section 552.301 of the Government Code in raising an exception to disclosure under section 552.108 of the Government Code. Section 552.301 prescribes procedures a governmental body must follow in asking this office to determine whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301(a). Section 552.301(b) requires the governmental body to ask for the attorney general's decision and claim its exceptions to disclosure not later than the tenth business day after the date of its receipt of the written request for information. *See id.* § 552.301(b). Section 552.301(e) requires the governmental body to submit to this office, not later than the fifteenth business day after the date of its receipt of the request for information, written comments stating why the exceptions to disclosure the governmental body claims are applicable to the information it seeks to withhold. *See id.* § 552.301(e)(1)(A). Section 552.302 of the Government Code provides that if a governmental body fails to comply with section 552.301, the requested information is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold any of the information. *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).

Although the district timely raised section 552.108 of the Government Code, for purposes of section 552.301(b), in requesting this decision, the district has not submitted any explanation of how or why section 552.108 would be applicable to any of the information at issue. Thus, the district did not comply with section 552.301(e) in raising section 552.108, which is a discretionary exception to disclosure 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), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). The district's assertion of section 552.108 is not a compelling reason for non-disclosure under section 552.302. *See* Open Records Decision No. 586 (1991). In failing to comply with section 552.301(e), the district waived section 552.108 and may not withhold any of the submitted information under that exception. We will address the district's claim under section 552.101 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 exception encompasses information made confidential by other statutes. The district claims 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.
>
> . . .
>
> (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 [the Act] or other law.

Fam. Code § 58.007(c), (e), (j); *see id.* § 51.03(a)-(b) (defining "delinquent conduct" and "conduct indicating need for supervision" for purposes of Fam. Code title 3). 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 district contends both of the police reports submitted as Exhibits C and D are confidential under section 58.007. We agree both reports involve juvenile suspects, so as to fall within the scope of section 58.007(c). Therefore, because the requestor is not depicted as a juvenile suspect or offender in Exhibit C, so as to have a right of access under section 58.007(e), the district must withhold Exhibit C in its entirety under section 552.101 of the Government Code in conjunction with section 58.007(c). In Exhibit D, however, the requestor is one of two juveniles listed as suspects. Therefore, because the requestor has the right under section 58.007(e) to inspect a juvenile law enforcement record depicting him as a suspect, the district may not withhold Exhibit D under section 552.101 on the basis of section 58.007(c).

Section 58.007(j) of the Family Code provides, however, that any personally identifiable information concerning other juvenile suspects, offenders, victims, or witnesses must be redacted. *See* Fam. Code § 58.007(j)(1). For purposes of section 58.007(j), a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) ("child" means a person who is ten years of age or older and under seventeen years of age). Therefore, the district must withhold the other juvenile suspect's name, address, and telephone number in Exhibit D under section 552.101 in conjunction with section 58.007(j)(1).

Section 58.007(j) also provides that information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). Section 552.130 of the Government Code excepts from disclosure information related to a motor vehicle operator's or driver's license or permit or a motor vehicle title or registration issued by an agency of this

state or another state or country.[1] *See* Gov't Code § 552.130(a)(1)-(2). The district must withhold the driver's license and motor vehicle information we have marked in Exhibit D under section 552.130.

In summary, the district (1) must withhold Exhibit C under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code; (2) must withhold the name, address, and telephone number of the other juvenile suspect in Exhibit D under section 552.101 in conjunction with section 58.007(j)(1) of the Family Code; (3) must withhold the marked driver's license and motor vehicle information in Exhibit D under section 552.130 of the Government Code; and (4) must release the remaining information in Exhibit D pursuant to section 58.007(e) of the Family Code.

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,

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 476633

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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[1]This office will raise section 552.130 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions).