



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 3, 2012

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

OR2012-19425

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# 472648 (Ref. No. 12179-70).

The Katy Independent School District (the "district") received a request for information pertaining to a specified incident involving the requestor's child. You state some of the requested information has been provided to the requestor. You claim the remaining 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."¹ Gov't Code § 552.101. This section encompasses information protected by other statutes, such as 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

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

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:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(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). The submitted information pertains to an investigation by the district's police department of alleged or suspected child abuse and is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for purposes of Family Code chapter 261); *see also id.* § 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). In this instance, however, the requestor is the mother of one of the child victims and is not the individual alleged to have committed the suspected abuse. *See* Fam. Code § 261.201(k). Thus, the submitted information may not be withheld from this requestor on the basis of section 261.201(a). *Id.* Subsection 261.201(l)(1), however, states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *Id.* § 261.201(l)(1). Further, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the district must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with subsections 261.201(l)(1) and (l)(3) of the Family Code. In addition, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law may still be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address whether any portion of the remaining information is excepted from disclosure.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You state the submitted information pertains to a criminal investigation by the district's police department that was suspended pending the development of additional information or suspects. As noted above, section 552.108(a)(2) is applicable only if the information at issue is related to a *concluded* criminal case "that did not result in conviction or deferred adjudication." Gov't Code § 552.108(a)(2). Thus, we find you have not demonstrated the information at issue relates to a closed criminal investigation that did not result in conviction or deferred adjudication. Accordingly, the district may not withhold any of the remaining information under subsection 552.108(a)(2) of the Government Code.

We note some of the remaining information may be excepted from public disclosure under section 552.101 in conjunction with section 21.355 of the Education Code. Section 21.355 provides in part "[a] document evaluating the performance of a teacher or administrator is confidential." *See* Educ. Code § 21.355(a). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). We have determined that for purposes of section 21.355, the word "teacher" means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. Additionally, the Third Court of

Appeals has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355, as it “reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

We understand the individual whose information is at issue was employed by the district as a teacher when his performance was evaluated. You do not inform us, however, whether the individual held a teaching certificate or permit under chapter 21 of the Education Code when the information at issue was created. Therefore, we must rule conditionally. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code if the teacher whose information is at issue held a teaching certificate or permit under chapter 21 of the Education Code and was functioning as a teacher at the time the information at issue was created. However, if the teacher did not hold a teaching certificate or permit under chapter 21 or was not functioning as a teacher at the time the information at issue was created, the information we have marked is not confidential under section 21.355 and may not be withheld under section 552.101 on that basis.

Section 552.130 excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit, title, or registration issued by an agency of this state or another state or country. Gov’t Code § 552.130. Accordingly, the district must withhold the driver’s license number we have marked under section 552.130 of the Government Code.

Section 552.137 provides, “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). *Id.* § 552.137(a)–(c). The district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the e-mail address affirmatively consents to its release.

In summary, the district must withhold (1) the identifying information we have marked under section 552.101 of the Government Code in conjunction with subsections 261.201(1)(1) and (1)(3) of the Family Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code if the teacher held a teaching certificate or permit under chapter 21 of the Education Code and was functioning as a teacher at the time the information at issue was created; (3) the driver’s license number we have marked under section 552.130 of the Government Code; and (4) the e-mail address we have marked under section 552.137 of the Government Code, unless the

owner of the e-mail address affirmatively consents to its release. 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,



Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 472648

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²We note the information to be released includes a social security number. Section 552.147 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). We also note the requestor in this case has a special right of access to the information being released. Therefore, if the district receives another request for this information from an individual other than this requestor, the district must again seek a decision from this office.