



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 24, 2013

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2013-08735

Dear Ms. McGowan:

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# 488300 (ORR# 11920 and 11934).

The Dallas Independent School District (the "district") received a request for seven categories of information pertaining to the requestor's client. The district received a second request from a different requestor for certain information pertaining to a specified arrest. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted information responsive to categories 1, 3, and 5 of the first request. To the extent information responsive to these portions of the first request existed on the date the district received the request, we assume you have released it. If you have not released any such information, you must do so at this time. *See Gov't Code §§ 552.301(a), 302; see also Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).*

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(17) information that is also contained in a public court record[.]

Gov't Code § 552.022(a)(17). The submitted information contains court-filed documents that are subject to subsection 552.022(a)(17), which must be released unless they are made confidential under the Act or other law. *See id.* You seek to withhold the information subject to subsection 552.022(a)(17) under sections 552.101, 552.108, and 552.135 of the Government Code. However, section 552.108 is a discretionary exception and does not make information confidential under the Act. *See 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).* Therefore, the marked court-filed documents may not be withheld under section 552.108 of the Government Code. However, as sections 552.101 and 552.135 of the Government Code make information confidential under the Act, we will consider your arguments under these sections for the marked court-filed documents. We note the court-filed documents contain information that may be subject to section 552.117(a)(1) of the Government Code.¹ Because section 552.117 makes information confidential under the Act, we will also address the applicability of this exception to the information subject to section 552.022(a)(17).

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 protected by other statutes, such as section 261.201 of the Family Code, which provides, in part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

¹The 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).*

Fam. Code § 261.201(a). You contend the submitted information is confidential under section 261.201. *See id.* § 261.001(1)(E) (definition of “abuse” for purposes of chapter 261 of the Family Code includes sexual assault under Penal Code section 22.011). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). You explain, however, the district has on its staff an employee who is shared with the Texas Department of Family and Protective Services (“DFPS”) to receive and investigate claims of child abuse. You also state the information at issue was obtained by the Dallas Police Department, the DFPS, and/or district police officers who are commissioned peace officers to investigate claims of child abuse.

We note a portion of the information at issue consists of a report of sexual assault involving an alleged victim who was seventeen years of age at the time of the offense. Although section 101.003(a) of the Family Code defines a “child” for purposes of section 261.201 as a “person under 18 years of age who is not and has not been married or who has not had the disabilities of minorities removed for general purposes,” *id.* § 101.003(a), we note section 22.011 of the Penal Code defines a “child” as “a person younger than seventeen years of age.” Penal Code § 22.011(c)(1). We find, when read together, section 261.001(1)(E) of the Family Code and section 22.011(c)(1) of the Penal Code prescribe sexual abuse of a child under chapter 261 requires the child be under the age of seventeen. Therefore, because the alleged victim listed in the information at issue was seventeen years old at the time of the offense, we cannot conclude this information consists of information that was used or developed in an investigation of child abuse under chapter 261 of the Family Code. The remaining information pertains to an incident involving an alleged victim who was nineteen years old at the time of the offense; thus, the remaining information pertains to an incident between two adults. Therefore, the submitted information is not confidential under section 261.201 of the Family Code and may not be withheld on that basis under section 552.101 of the Government Code.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information not subject to section 552.022(a)(17) pertains to an ongoing investigation by the district’s police department, which objects to release of the information at issue. Based upon these representations and our review, we conclude release of the information at issue would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus,

the district may withhold the information not subject to section 552.022(a)(17) under section 552.108(a)(1) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See* Open Records Decision No. 506 at 5-7 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). The information subject to section 552.022(a)(17) contains personal information of a district employee. To the extent this individual timely elected to keep such information confidential under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the district may only withhold the cellular telephone number we have marked if the cellular telephone service is not paid for by a governmental body. If the individual at issue did not make a timely election under section 552.024, the district may not withhold the marked information under section 552.117(a)(1) of the Government Code.

Section 552.135 of the Government Code provides in part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135(a)-(b). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, individuals who provide information in the course of an investigation, but who do not make the initial report are not informants for purposes of section 552.135 of the Government Code. Upon review, we find you have failed to demonstrate the remaining information at issue identifies an informer who furnished an

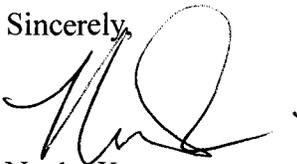
initial report of a violation of law to the district for purposes of section 552.135. Thus, the district may not withhold any of the remaining information under section 552.135 of the Government Code.

In summary, the district may withhold the information not subject to section 552.022(a)(17) of the Government Code under section 552.108(a)(1) of the Government Code. To the extent the employee at issue timely elected to keep his information confidential under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code; however, the district may only withhold the cellular telephone number we have marked if the cellular telephone service is not paid for by a governmental body. The remaining information subject to section 552.022(a)(17) must be released.

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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/bhf

Ref: ID# 488300

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Ref: ID# 488300

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)