



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2013

Ms. Maria Miller
Legal Assistant
Dallas County Community College District
1601 South Lamar, Suite 208
Dallas, Texas 75215-1816

OR2013-13159

Dear Ms. Miller:

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# 494738.

The Dallas County Community College District (the "district") received a request for information pertaining to a specified incident involving the requestor's daughter. 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 submitted information.

Initially, we must address the district's obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov't Code § 552.301. Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). In this

instance, you state the district received the request for information on May 8, 2013. Accordingly, the district's fifteen-business-day deadline was May 30, 2013. The envelope in which the district originally submitted the information required by section 552.301(e) was returned to the district for insufficient postage and the district again mailed the required information to this office in an envelope bearing a postmark of June 4, 2013. Section 552.308 of the Government Code provides, when a submission within a specified time period is required under the Act, the time requirement is met if the submission is sent by first class mail "with postage . . . prepaid" and the postmark date is within the required time period. *See id.* § 552.308. Because the district did not submit the information required by section 552.301(e) within the required time period, we find the district failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Forth Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-81 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). The presumption that information is public under section 552.302 can generally be overcome by demonstrating the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). You claim an exception to disclosure under section 552.108 of the Government Code, which is discretionary 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 section 552.108 subject to waiver). Therefore, the district may not withhold any of the submitted information under section 552.108. However, you also raise section 552.101 of the Government Code. Further, we note a portion of the information is subject to section 552.137 of the Government Code.¹ Because these exceptions can provide compelling reasons to withhold information, we will address the applicability of sections 552.101 and 552.137 to 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." Gov't Code § 552.101. Section 552.101 encompasses information other statutes make confidential, such as section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007(c), "child" means a person who is ten years of age or older

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).

and under seventeen years of age at the time of the reported conduct. *See* Fam. Code § 51.02(2). Section 58.007 provides, in pertinent part, as follows:

(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.

Id. § 58.007(c), (e), (j). Upon review, we find the submitted information involves juvenile delinquent conduct occurring after September 1, 1997; therefore, the submitted information is subject to section 58.007. However, we note the requestor is a parent of the

juvenile offender listed in the submitted information. Therefore, the requestor has a right to inspect law enforcement records concerning his child under section 58.007(e). *See id.* § 58.007(e). We note, however, personally identifiable information concerning any other juvenile suspects, offenders, victims, or witnesses must be redacted pursuant to section 58.007(j)(1) of the Family Code. *See id.* § 58.007(j)(1). For purposes of section 58.007(j)(1), a juvenile suspect or offender is a child as defined by section 51.02 of the Family Code. *See id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age). For the purposes of section 58.007(j)(1), a juvenile victim or witness is a person who is under eighteen years of age. Upon review, we find the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code.

Section 58.007(j)(2) of the Family Code further provides that information subject to any other exception to disclosure under the Act or law must be redacted before a governmental body releases information pursuant to section 58.007(e). *Id.* § 58.007(j)(2). Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body,” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). Accordingly, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address affirmatively consents to its release. *See id.* § 552.137(b).

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 58.007(j)(1) of the Family Code. The district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner of the address affirmatively consents to its release. The district must release the remaining information to this requestor.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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

²We note the requestor has a special right of access to the information being released in this instance. 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.

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping, sweeping lines that form a stylized representation of the name Ana Carolina Vieira.

Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 494738

Enc. Submitted documents

c: Requestor
(w/o enclosures)