



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 20, 2013

Mr. Ricardo R. Lopez
Schulman, Lopez & Hoffer, L.L.P.
517 Soledad Street
San Antonio, Texas 78205-1508

OR2013-14532

Dear Mr. Lopez:

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# 496897.

The North East Independent School District (the "district"), which you represent, received a request for information pertaining to paraprofessionals, aides, substitute paraprofessionals, substitute aids, and substitute teaching assistants employed by the district and assigned to a named district school during the 2012-2013 school year, including name, employment status, classrooms worked, disciplinary reports, complaints, and contact with certain children. You claim that 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.

Initially, we note the submitted information contains the names and employment statuses of the employees specified in the request. Section 552.022(a)(2) of the Government Code provides the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body are expressly public under section 552.022 of the Government Code and may not be withheld unless it is made confidential under the Act or other law. Gov't Code § 552.022(a)(2). Although you assert this information is excepted from disclosure under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests. *See* Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, section 552.108 does not constitute other law for purposes of

section 552.022(a)(2). Accordingly, the district may not withhold the names and employment statuses under section 552.108. We note the information at issue may be subject to section 552.101 of the Government Code, which makes information confidential under the Act.¹ Accordingly, we will address the applicability of section 552.101 to the names and employment statuses and your claim for the information not subject to section 552.022.

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

(a) Except as provided by Section 261.203, the 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:

(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.

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).

(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 [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l)(2), (3). Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect by the district's police department under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201 of Family Code); *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). Thus, the submitted information is generally confidential under section 261.201(a) of the Family Code. We note, however, the requestor may represent the parents of the child victims for purposes of section 261.201(k). Furthermore, the parents at issue are not alleged to have committed the alleged or suspected abuse or neglect. Because it is not clear who the requestor represents, we must rule conditionally. If the requestor does not represent the parent of a child victim, then the district must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor represents the parent of a child victim, the district may not use section 261.201(a) to withhold this information from this requestor. *Id.* § 261.201(k). However, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). 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 your argument under section 552.108 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime if release of the information would interfere with the detection, investigation, or prosecution of crime. Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* § 552.301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. *See Open Records Decision No. 474 at 4-5 (1987)*. Where a governmental body possesses information relating to a pending case of another law enforcement agency, the governmental body may withhold the information under

section 552.108 if (1) it demonstrates the information relates to the pending case, and (2) this office is provided with a representation from the law enforcement entity that the law enforcement entity wishes to withhold the information. You state the remaining information relates to a pending criminal investigation with the San Antonio Police Department (the "department"). You have provided a letter from the department stating the investigation is ongoing and indicating release of the information could interfere with the investigation. Based upon these representations, we conclude that section 552.108(a)(1) is generally applicable in this instance. 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). We note, however, that the information at issue includes a statutory warning. Because a copy of that form was provided to the person who is the subject of the warning, we find release of the statutory warning will not interfere with the detection, investigation, or prosecution of crime. See Gov't Code § 552.108(a)(1). Accordingly, the statutory warning may not be withheld under section 552.108.

However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." *Id.* § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle* and includes the identity of the complainant and a detailed description of the offense. See 531 S.W.2d at 186-187; see also Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). As previously noted, section 261.201(1)(3) states the identity of the reporting party must be withheld when a governmental body releases information under section 261.201(k). See Fam. Code § 261.201(1)(3). Accordingly, with the exception of basic information and the statutory warning, which must be released, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the department. However, in releasing basic information, the district must withhold the identities of the reporting parties under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code to the extent the requestor does not represent the reporting party at issue.

In summary, if the requestor does not represent a parent of a child victim, then the district must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If the requestor represents a parents of a child victim, then (1) the district must release the names and employment statuses of the employees specified in the request to the requestor; (2) with the exception of basic information and the statutory warning, the district may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the department; (3) in releasing basic information, the district must withhold the identity of the reporting parties under section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code to the extent the requestor does not represent the reporting party at issue.

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 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, appearing to read 'Sarah Casterline', with a long horizontal line extending to the right.

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 496897

Enc. Submitted documents

c: Requestor
(w/o enclosures)