



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 27, 2015

Mr. Hector M. Benavides  
Counsel for the Northside Independent School District  
Walsh, Anderson, Gallegos, Green and Trevino, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2015-10281

Dear Mr. Benavides:

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# 565155.

The Northside Independent School District (the "district"), which you represent, received a request for information pertaining to a named former employee of the district and the events leading up to his resignation.<sup>1</sup> You state the district will redact social security numbers pursuant to section 552.147(b) of the Government Code and other information pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> Further, we understand you will redact information protected by section 552.117(a) of the Government Code pursuant to section 552.024 of the

---

<sup>1</sup>We note the district sought and received clarification of this request from the requestor. *See Gov't Code* § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if governmental entity, acting in good faith, requests clarification of unclear or over-broad request, ten-day period to request attorney general ruling is measured from date request is clarified).

<sup>2</sup>Section 552.147(b) 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 under the Act. *See Gov't Code* § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold specified categories of information without the necessity of requesting an attorney general decision.

Government Code.<sup>3</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-05965 (2015). In Open Records Letter No. 2015-05965, we ruled (1) the district must withhold certain information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code if the victim in the information at issue was under 18 years of age at the time of the incidents in question; (2) to the extent the information at issue was not otherwise confidential under section 261.201 of the Family Code, the district must withhold certain information under section 552.135 of the Government Code; (3) and the district must release the remaining information.<sup>4</sup> Section 552.007 of the Government Code provides that, if a governmental body voluntarily releases information to any member of the public, the governmental body may not withhold such information from further disclosure unless its public release is expressly prohibited by law or the information is confidential under law. *See Gov't Code* § 552.007; Open Records Decision No. 518 at 3 (1989); *see also* Open Records Decision No. 400 (1983) (governmental body may waive right to claim permissive exceptions to disclosure under the Act, but it may not disclose information made confidential by law). Accordingly, pursuant to section 552.007, the district may not now withhold the previously released information unless its release is expressly prohibited by law or the information is confidential under law. Because sections 552.103 and 552.108 do not prohibit the release of information or make information confidential, the district may not now withhold any previously released information under these sections. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 586 (1991) (governmental body may waive section 552.108). However, sections 552.101, 552.102, and 552.135 of the Government Code make information confidential by law for purposes of section 552.007. *See Gov't Code* §§ 552.101, .102, .135; *see also* Open Records Decision No. 674 at 3 n.4 (2001) (mandatory exceptions). Thus, we will consider the district's arguments under these sections for the previously released information.

---

<sup>3</sup>Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See Gov't Code* § 552.024; *see also id.* § 552.024(a-1) (a school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number).

<sup>4</sup>The district has informed us the victim in the information at issue in Open Records Letter No. 2015-05965, as well as in the present request, is a child for purposes of section 261.201 of the Family Code. *See Fam. Code* § 261.201; *see also id.* § 101.003(a).

Furthermore, in the instant request, the requestor is the authorized representative of the child victim listed in the submitted information, who is now an adult. Accordingly, this requestor has a special right of access to information pertaining to the child under section 261.201(k) of the Family Code. Therefore, we find the facts or circumstances on which Open Records Letter No. 2015-05965 was based have changed. Thus, the district may not rely on Open Records Letter No. 2015-05965 as a previous determination to withhold any of the information at issue in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Accordingly, we will consider all of the district's arguments against disclosure of the submitted information not previously released.

Next, we note you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>5</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"); *see also* Open Records Decision No. 224 (1979) (student's handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). However, FERPA is not applicable to records that were created by a law enforcement unit of an educational agency or institution for a law enforcement purpose and that are maintained by the law enforcement unit. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Upon review, we find some of the information you have redacted under FERPA is contained within case numbers 20140323241 and 20141228832, which are law enforcement records created by the district's police department (the "department") for a law enforcement purpose. These records are not subject to FERPA and no portion of these records may be withheld on that basis. However, because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the district must not redact information from the information it submits to this office unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. Failure to comply with section 552.301 may result

---

<sup>5</sup>A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>

in the information being presumed public under section 552.302 of the Government Code. *See* Gov't Code § 552.302.

With respect to the redacted education records you have submitted, because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the education records, except to note a student's legal representative has a right of access under FERPA to the student's education records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider the district's claimed exceptions against disclosure of the submitted information to the extent the requestor does not have a right of access to the information under FERPA.

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. Section 261.201 of the Family Code provides, in relevant part, as follows:

(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 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:

...

(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). Case numbers 20140323241 and 20141228832 are law enforcement records that pertain to investigations conducted by the department, which is an agency authorized to conduct investigations under chapter 261. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we find this information consists of files, reports, records, communications, or working papers used or developed in an investigation of alleged or suspected child abuse. *See 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), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Thus, case numbers 20140323241 and 20141228832 are generally confidential under section 261.201(a) of the Family Code. However, as previously noted, the requestor is the authorized representative of the child victim listed in the law enforcement records. Thus, pursuant to section 261.201(k), the district may not withhold this information from this requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See id.* § 261.201(k).

Further, you assert a portion of the remaining information is confidential under section 261.201. We note this information pertains to an investigation conducted by the district, which is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103. However, upon review, we find portions of the remaining information consist of the identities of individuals who made reports of alleged child abuse to the department or the Child Protective Services Division of the Texas Department of Family and Protective Services. Thus, this information is generally confidential under section 261.201(a) of the Family Code. Nevertheless, as previously noted, the requestor is the authorized representative of the child victim at issue. Thus, pursuant to section 261.201(k), the district may not withhold this information from this requestor under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See id.* § 261.201(k).

Notwithstanding the foregoing, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Accordingly, the district must withhold the identifying information of the reporting parties, which we have marked, under

section 552.101 of the Government Code in conjunction with section 261.201(1)(3) of the Family Code.<sup>6</sup> Additionally, section 261.201(1)(2) states a governmental body must redact any information that is excepted from required disclosure under the Act or other law. *See id.* § 261.201(1)(2). Accordingly, we will consider your remaining arguments against disclosure of the information subject to section 261.201(a), as well as the remaining information.

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 the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency possesses information relating to a pending case of a law enforcement agency, the non-law enforcement agency may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and provides this office with a representation from the law enforcement agency that wishes to withhold the information. You state the district has been in contact with the Bexar County District Attorney’s Office (the “district attorney’s office”), which objects to the release of the remaining information not previously released because it pertains to a pending criminal investigation. Based on your representations, we conclude the 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, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, we find section 552.108(a)(1) is applicable to the remaining information not previously released.

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle*). We note basic information does not include motor vehicle record information encompassed by section 552.130 of the Government Code, dates of birth, or the identifying information of (1) a victim who is not also the complainant, or (2) witnesses. *See id.* Thus, with the exception of basic information, the district may withhold the remaining information

---

<sup>6</sup>As our ruling is dispositive, we do not address your other arguments to withhold this information.

not previously released under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.<sup>7</sup>

Section 552.135 of the Government Code provides the following:

(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 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. 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 the investigation, but do not report a violation of law are not informants for purposes of section 552.135 of the Government Code.

The district claims portions of the previously released information reveal the identities of informers who reported a possible violation law. Upon review, however, we find the district has not demonstrated any of the previously released information identifies an informer for the purposes of section 552.135. Therefore, we find the district may not withhold any of the previously released information under section 552.135 of the Government Code.

In summary, the district must withhold the identifying information of the reporting parties, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(l)(3) of the Family Code. With the exception of basic information and to the extent the requestor does not have a right of access under FERPA, the district may withhold the remaining information not previously released under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office. The remaining information must be released.

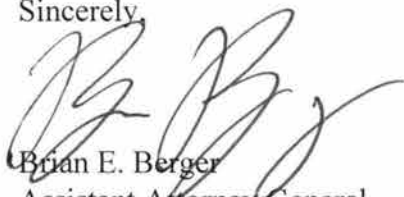
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

---

<sup>7</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information, except to note basic information is generally not excepted from public disclosure under section 552.103 of the Government Code. *See* Open Records Decision No. 597 (1991).

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](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,



Brian E. Berger  
Assistant Attorney General  
Open Records Division

BB/akg

Ref: ID# 565155

Enc. Submitted documents

c: Requestor  
(w/o enclosures)