



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 7, 2019

Mr. Wayne D. Haglund
Counsel for Coldspring-Oakhurst Consolidated Independent School District
Haglund Law Firm, P.C.
P.O. Box 713
Lufkin, Texas 75902-0713

OR2019-12171

Dear Mr. Haglund:

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# 764019.

The Coldspring-Oakhurst Consolidated Independent School District (the "district"), which you represent, received a request for information pertaining to a specified investigation.¹ The district states it has released some information to the requestor. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.² We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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

¹As the district has not submitted a copy of the written request for information, we take our description of the request from its brief.

²Although the district does not raise section 552.101 of the Government Code in its brief, we understand the district to raise this exception based on the substance of its argument.

the purpose of our review in the open records ruling process under the Act.³ 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). We note 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. The district states the submitted information was created and is maintained by the district’s police department (the “department”). Thus, the submitted information is not encompassed by FERPA, and no portion of the submitted information may be withheld on that basis. Therefore, we will consider the submitted arguments against disclosure of the submitted information.

Next, we note the district has redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. *See* Gov’t Code § 552.301(a), (e)(1)(D). The district does not assert, nor does our review of our records indicate, the district has been granted a previous determination to withhold such information without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). As such, this information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of this information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information that it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov’t Code § 552.302.

Next, we must address the district’s procedural obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See id.* § 552.301. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) 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)

³A copy of this letter may be found on the Office of the Attorney General’s website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

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). As of the date of this letter, the district has not submitted for our review a copy of the written request for information. Consequently, we conclude the district failed to comply with the procedural requirements mandated by section 552.301(e) of the Government Code.

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 that the requested information is public and must be released unless there is a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302). The need of a governmental body, other than the governmental body that failed to timely seek an open records decision, to withhold information under section 552.108 of the Government Code can provide a compelling reason sufficient to overcome the presumption of openness. *See* Open Records Decision No. 586 (1991). The district provided a statement from the San Jacinto County District Attorney's Office (the "district attorney's office") objecting to the release of the requested information under section 552.108 of the Government Code. Therefore, we will consider whether the district may withhold the requested information under section 552.108 of the Government Code on behalf of the district attorney's office. Additionally, because section 552.101 can provide a compelling reason to overcome the presumption of openness, we will address the applicability of this exception to the submitted information.

Next, we note the submitted information contains a court-filed document that is subject to section 552.022(a)(17) of the Government Code, which provides:

[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 information at issue, which we marked, consists of a court-filed document that is subject to section 552.022(a)(17). This information must be released unless it is made confidential under the Act or other law. *See id.* Although section 552.108 is raised for the submitted court-filed document, this exception is discretionary in nature and does not make information confidential under the Act. *See* Open Records

Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the information subject to section 552.022(a)(17) under section 552.108 of the Government Code on behalf of the district attorney's office. However, as section 552.101 of the Government Code makes information confidential under the Act, we will consider its applicability to the information subject to section 552.022. We will also consider the submitted arguments for the information not subject to section 552.022.

Section 552.101 of the Government Code excepts from public 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 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 [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 [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.

Fam. Code § 261.201(a). Upon review, we find the submitted information may relate to an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "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 minority removed for general purposes). 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). Nonetheless, the submitted information was used or developed by the department, which is an agency authorized to conduct investigations under chapter 261 of the Family Code. However, because we are unable to determine from the submitted information whether the victim in this instance was under 18 years of age at the time of the alleged abuse or neglect, we must rule conditionally. Accordingly, if the victim in the submitted information was under 18 years of age at the time of the alleged abuse or neglect, 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.⁴ If the victim was not under 18 years of age at the time of the alleged abuse or neglect, then the district may not withhold the submitted information on that basis. In that instance, we will address the remaining arguments against disclosure of the information at issue.

Section 552.108(a)(1) 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 explain how and why the release of the requested information 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 (Tex. 1977). The district states, and provides documentation showing, the district attorney’s office objects to the disclosure of the information at issue because it relates to an ongoing criminal investigation or prosecution with the district attorney’s office. Based upon these 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 (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, section 552.108(a)(1) is applicable to the information at issue.

However, section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” *See* Gov’t Code § 552.108(c). Section 552.108(c) refers to the basic information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note basic information includes a detailed description of the offense and the identity of the complainant, but does not include the identifying information of witnesses to a crime, or the victim, unless the victim is also the complainant. *See id.* at 3-4. Accordingly, with the exception of the court-filed document we marked under section 552.022(a)(17) of the Government Code and the basic information, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.⁵

Section 552.101 of the Government Code also encompasses section 21.12 of the Penal Code. Section 21.12(a) provides a public or private primary or secondary school employee commits an offense if the employee “engages in sexual contact, sexual intercourse, or deviate sexual

⁴In this instance, as our ruling is dispositive, we need not address the remaining arguments against disclosure of this information.

⁵In this instance, as our ruling is dispositive, we need not address the remaining argument against disclosure of this information.


intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works[.]” Penal Code § 21.12(a)(1). Further, section 21.12(d) provides “[t]he name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under [the Act].” *Id.* § 21.12(d). The submitted information pertains to an investigation of an alleged improper relationship between a public school employee and a student. *See id.* § 21.12(a). Therefore, in releasing basic information, the district must withhold the student victim’s name under section 552.101 of the Government Code in conjunction with section 21.12(d) of the Penal Code.

In summary, if the victim in the submitted information was under 18 years of age at the time of the alleged abuse or neglect, 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 victim was not under 18 years of age at the time of the alleged abuse or neglect, then, with the exception of the court-filed document we marked under section 552.022(a)(17) of the Government Code and the basic information, which must be released, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office; however, in releasing the basic information, the district must withhold the student victim’s name under section 552.101 of the Government Code in conjunction with section 21.12(d) of the Penal Code.

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,



James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 764019

Enc. Submitted documents

c: Requestor
(w/o enclosures)