



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 6, 2019

Ms. Ylise Janssen
General Counsel
Austin Independent School District
1111 West Sixth Street
Austin, Texas 78703

OR2019-34347

Dear Ms. Janssen:

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# 800556.

The Austin Independent School District (the "district") received a request for nine categories of information pertaining to the requestor's child, district employees, district policies, and specified meetings and incidents. 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, some of which consists of a representative sample.¹

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 section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the 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 Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). We find Exhibit B involves a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear that any of the exceptions in section 58.008 apply; therefore, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.²

Section 552.101 of the Government Code also encompasses the Homeland Security Act (the “HSA”). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.176(a) provides:

Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and:

- (1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency;
- (2) relates to a tactical plan of the provider; or
- (3) consists of a list or compilation of pager or telephone numbers, including mobile and cellular telephone numbers, of the provider.

² As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Gov't Code § 418.176(a). Section 418.177 states:

Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. The fact that information may relate to a governmental body's security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

Exhibit C consists of training materials used by the district's police department (the "department"). You state Exhibit C is "inextricably linked to the procedures taken by [the department] when responding to critical events, inclusive of threats made to schools and student safety in general[.]" Accordingly, we understand you to assert the information at issue pertains to tactical plans of an emergency response provider. Upon review, we find the information we marked was collected, assembled, or maintained for the purposes of preventing, detecting, responding to, or investigating an act of terrorism or related criminal activity and that it relates to tactical plans of an emergency response provider. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 418.176 of the Government Code. However, we find you failed to demonstrate the remaining information at issue relates to staffing requirements or a tactical plan of an emergency response provider for purposes of section 418.176. Further, we find you failed to demonstrate the remaining information relates to an assessment of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity for purposes of section 418.177. Accordingly, the district may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 418.176 or section 418.177 of the Government Code.

In summary, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction

with section 418.176 of the Government Code. The district must release the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Emily Kunst". The signature is written in a cursive, flowing style.

Emily Kunst
Assistant Attorney General
Open Records Division

EK/rm

Ref: ID# 800556

Enc. Submitted documents

c: Requestor
(w/o enclosures)