



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 12, 2022

Mr. Victor I. Cerda  
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OR2022-19939

Dear Mr. Cerda:

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# 957045.

The Eagle Pass Independent School District (the "district"), which you represent, received a request for a specified incident report. The district claims the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the claimed exception and reviewed the submitted information.

Initially, the district informs us it has redacted student-identifying information in the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>9</sup> However, FERPA is not applicable to law enforcement records maintained by the district's Police Department (the "department") that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. The submitted information includes records that were created by the department for the purpose of law enforcement. Thus,

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<sup>9</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

these records are not subject to FERPA, and no portion of these records may be withheld on that basis. Because we are able to discern the nature of the redacted information, we are not prevented from determining whether that information falls within the scope of the district's exceptions to disclosure. Accordingly, we will address the district's arguments with respect to the information at issue, including the redacted information. Nevertheless, we caution the district that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information to be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of specific information requested or representative sample if information is voluminous).

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> Gov't Code § 552.101. Section 552.101 encompasses section 58.008 of the Family Code, which provides, in part, the following:

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

...

(d) Law enforcement records concerning a child may be inspected or copied by:

...

(4) the child's parent or guardian.

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<sup>1</sup> The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

(e) Before a child or a child's parent or guardian may inspect or copy a record concerning the child under Subsection (d), the custodian of the record shall redact:

...

(2) any information that is excepted from required disclosure under [the Act], or any other law.

Fam. Code § 58.008(b); *see also* Fam. Code § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” 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 ten years old and less than seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). The submitted information may involve delinquent conduct or conduct indicating a need for supervision. However, we are unable to determine the age of the offender at issue and whether the requestor is a parent or guardian of that offender. Accordingly, we must rule conditionally. If the offender was not ten years of age or older and under seventeen years of age at the time of the conduct, then the district may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If (1) the offender was ten years of age or older and under seventeen years of age at the time of the conduct at issue and (2) the requestor is not a parent or guardian of the juvenile offender, then the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If (1) the offender was ten years of age or older and under seventeen years of age at the time of the conduct at issue and (2) the requestor is a parent or guardian of the juvenile offender, then the requestor has access to the information at issue pursuant to section 58.008(d) of the Family Code and the district may not withhold it under section 552.101 on the basis of section 58.008(b). *See id.* § 58.008(d). Section 58.008(e)(2) provides information that is subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.008(e)(2). Thus, in the event the requestor has access to the information pursuant to section 58.008(d), we will consider whether the submitted information is otherwise excepted from disclosure.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part, as follows:

(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 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 Juvenile Justice Department, 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[.]

*Id.* § 261.201(a), (k), (l)(2). For purposes of section 261.201, a child is defined 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.” *See id.* § 101.003(a). Upon review, we find the submitted information may have been used or developed by the district’s police department (the “department”) in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). The district does not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. However, we are unable to determine the age of the victim at issue or whether the requestor is a parent, managing conservator, or other legal representative of the child victim. Thus, we must rule conditionally. If the victim at issue in the submitted information was eighteen years of age or older at the time of the offense, then the city may not withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If (1) the victim was under eighteen years of age at the time of the offense and (2) the requestor is not a parent, managing conservator, or other legal representative of the child victim, then the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If (1) the victim was under eighteen years of age at the time of the offense and (2) the requestor is a parent, managing conservator, or other legal representative of the child victim, then the requestor has access to the information pursuant to section 261.201(k)

and the district may not withhold it under section 552.101 on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(1)(2) states any information that is excepted from required disclosure under the Act or other law must be redacted. *Id.* § 261.201(1)(2). Therefore, in the event the requestor has access to the submitted information pursuant to section 261.201(k), we must determine whether the information at issue is otherwise excepted from release under the Act.

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[.]” *Id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must 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). The district indicates the submitted information relates to a criminal case where the defendant was found guilty and placed on deferred prosecution. The district represents if the defendant does not comply with the deferred adjudication, the criminal case could be re-opened. Therefore, the district claims this information relates to a pending criminal case. Upon review, we conclude the release of the submitted information 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).

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 the *Houston Chronicle* decision. *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* decision). Basic information includes a detailed description of the offense, the identity of the arrestee, and the identity of the complainant, but does not include the identity of the victim, unless the victim is the complainant. *See* ORD 127 at 3-4. Thus, with the exception of basic information, including the basic information that the district redacted the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if (1) the offender at issue in the submitted report was ten years of age or older and under seventeen years of age at the time of the conduct at issue and (2) the requestor is not a parent or guardian of the juvenile offender, then the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. If (1) the victim at issue in the submitted report was eighteen years of age or older at the time of the offense and (2) the requestor is not a parent, managing conservator, or other legal representative of the child victim, then the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the submitted information is not to be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 58.008(b) or 261.201(a) of the Family Code, then the district must release basic information, including the basic information that it redacted, but may withhold the remaining information under section 552.108(a)(1) of the Government 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 <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,

James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jxd

Ref: ID# 957045

Enc. Submitted documents

c: Requestor  
(w/o enclosures)