



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 23, 2007

Mr. John A. Kazen  
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Counsel for Laredo Independent School District  
P.O. Box 6237  
Laredo, Texas 78042

OR2007-00724

Dear Mr. Kazen:

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# 269501.

The Laredo Independent School District (the "district"), which you represent, received a request for information related to a specified investigation. You state that the district is withholding information protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA"). You also state that some of the remaining requested information has been released but claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we address the requestor's contention that the district failed to follow its procedural obligations under section 552.301 of the Government Code. Section 552.301 prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(d) provides that a governmental body that requests an attorney general decision must provide to the requestor, not later than the 10<sup>th</sup> business day after the date of its receipt of the written request for information:

- (1) a written statement that the governmental body wishes to withhold the requested information and has asked for an attorney general decision about whether the information is within an exception to public disclosure; and
- (2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

Gov't Code § 552.301(d). The district received the request for information on October 25, 2006. Thus, the district was required to mail a copy of its request for a ruling to the requestor no later than November 8, 2006. The requestor contends that the district failed to mail a copy of its request for a ruling to him until November 13, 2006. However, the district states, and provides documentation demonstrating, that it mailed a copy of its request for a ruling to the requestor on November 8, 2006. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). As the requestor has provided no documentation to the contrary, we determine that the requestor has not established that the district violated the procedural requirements of section 552.301(d).

We next address the exception to disclosure claimed by the district. 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 made confidential by statute. Section 261.201(a) of the Family Code provides as follows:

(a) The 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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The submitted information consists of documents created during an investigation of an improper relationship between an educator and a student conducted by the district's police department and a report that was created as part of an investigation conducted under chapter 261 by the Texas Department of Family and Protective Services (the "department"). You explain, and the documents reflect, that the department's report

was provided to the district by the department pursuant to section 261.406. *See id.* § 261.406(a) (providing that department shall send written report of its investigation to the employing school district and release of such information is governed by section 261.201). Thus the submitted information consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261. Therefore, we conclude that the submitted information is *confidential in its entirety* under section 261.201 of the Family Code.

The requestor asserts, however, that the claimed exception to disclosure has been waived because the department previously released the information to the Texas Education Agency (the “agency”) and the State Board for Educator Certification (the “board”). First, the district has not waived the exception because the prior release was by the department and not by the district. Second, 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. *See Gov’t Code 552.007*; Open Records Decision No. 518 at 3 (1989). In response, the district contends that the release of information to the agency and the board did not constitute a voluntary public disclosure for purposes of section 552.007.

Section 261.201(a) provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* § 261.201(a). We understand that, in the case of the prior release, the information was provided to the district, board, and agency by the department pursuant to an investigation of an individual who has applied for or currently holds educator credentials. We note that, under section 261.406 of the Family Code, the district, agency, and board are authorized to receive these types of records. *See id.* § 261.406(b) (providing that department shall send written report of its investigation to the agency, the board, the local school board or the school’s governing body, the superintendent of the school district, and the school principal or director and that release of such information is governed by Fam. Code § 261.201). We further note that an entity that is authorized to receive confidential information from the department is required to maintain the confidentiality of such records and prevent disclosure to any unauthorized person. *See Hum. Res. Code § 40.005(d)*. Consequently, we conclude that the release of the submitted information was not a voluntary release of information for purposes of section 552.007. Furthermore, because the information is confidential under section 261.201 and release is expressly prohibited by law, a prior voluntary release would not result in the waiver of confidentiality. *Gov’t Code § 552.007*.

Finally, we address the requestor’s contention that the district must release the submitted information to him pursuant to section 261.406 of the Family Code. Section 261.406 provides in part: “On request, the *department* shall provide a copy of the report of investigation to the . . . person alleged to have committed the abuse or neglect.” Fam. Code § 261.406(b) (emphasis added). By its terms, section 261.406 applies to the department. We

therefore conclude that section 261.406 does not require the district to release the requested information to the requestor. Therefore, we conclude that the submitted information is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

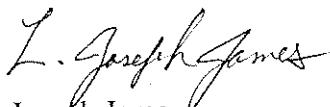
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/eb

Ref: ID# 269501

Enc. Submitted documents

c: Mr. Michael J. Currie  
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(w/o enclosures)