



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 20, 2007

Mr. John A. Kazen  
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P.O. Box 6237  
Laredo, Texas 78042-6237

OR2007-07810

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# 281412.

The Laredo Independent School District (the "district"), which you represent, received a request for information pertaining to a named district employee. You state that you have released some of the requested information to the requestor. You 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.

Initially, we note that the district has failed to comply with section 552.301 of the Government Code in requesting this decision. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Pursuant to section 552.301(b), the governmental body must ask for the attorney general's decision and state the exceptions that apply within ten business days after receiving the request. See Gov't Code § 552.301(a), (b). Within fifteen business days of receiving the request, the governmental body must submit to this office (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) 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. Gov't Code § 552.301(e)(1)(A)-(D).

You indicate that the district received the request for information on March 5, 2007. However, you did not request a ruling from or submit the required documents to this office until April 16, 2007. Accordingly, we find that the district failed to comply with the procedural requirements of section 552.301 in requesting an opinion from this office.

A governmental body's failure to comply with the procedural requirements of section 552.301 of the Government Code results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (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); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because section 552.101 of the Government Code can provide compelling reasons to withhold information, we will address the applicability of this exception to the submitted information.

Recently, the United States Department of Education Family Policy Compliance Office (the "DOE") informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental 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>1</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"). Determinations under FERPA must be made by the educational authority in possession of the education records.<sup>2</sup> We note that FERPA is not applicable to law enforcement records maintained by the district police 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. You have submitted, among other things, education records that you have redacted pursuant to FERPA for our review. However, some of the submitted records still contain student identifying information. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records.

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website: [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

<sup>2</sup>In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

However, we will consider the applicability of your claimed exceptions to disclosure of the submitted information.

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 261.201(a) of the Family Code, which 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). We note that the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, Exhibit B involves reports of alleged or suspected abuse made to the Child Protective Services Division of the Texas Department of Family and Protective Services (“CPS”), as well as the identity of the person making the report and other information used or developed in an investigation by CPS. Upon review, we find that Exhibit B is within the scope of section 261.201 of the Family Code. Therefore, Exhibit B is confidential pursuant to section 261.201 of the Family Code. Section 261.201(a) provides, however, 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).

Section 22.082 of the Education Code provides that “[t]he State Board for Educator Certification (“SBEC”) shall obtain from any law enforcement or criminal justice agency all criminal history record information (“CHRI”) that relates to an applicant for or holder of a certificate.” Educ. Code § 22.082. CHRI is defined as “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.” Gov’t Code § 411.082(2). A school district may release CHRI to the Texas Education Agency (“TEA”) and SBEC. *Id.* § 411.097(d); *see also id.* §§ 411.090 (SBEC is entitled to obtain CHRI from Texas Department of Public Safety (“DPS”) about person who has applied to SBEC for certificate under Subchapter B, Chapter 21, Education Code), 411.087(a)(2) (agency that is entitled to obtain CHRI from DPS is also authorized to

“obtain from any other criminal justice agency in this state criminal history record information maintained by that [agency]”); *cf. Brookshire v. Houston Indep. Sch. Dist.*, 508 S.W.2d 675, 678-79 (Tex. Civ. App.—Houston [14<sup>th</sup> Dist.] 1974, no writ) (when legislature defines term in one statute and uses same term in relation to same subject matter in latter statute, later use of term is same as previously defined).

The requestor is a staff investigator with the TEA, which has assumed the duties of SBEC.<sup>3</sup> The requestor states that TEA is conducting an investigation of an individual who has applied for or currently holds educator credentials. Thus, in this instance, sections 22.082 and 411.097 are applicable state laws. However, this office cannot determine whether the release of the CHRI is consistent with the Family Code. If CPS determines that release is consistent with the Family Code, the district must release information from Exhibit B that shows the type of allegations made and whether there was an arrest, information, indictment, detention, conviction, or other formal charges and their dispositions. *See generally* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory predecessor to Act). In that instance, the district must withhold the remainder of the information in Exhibit B pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

If, however, CPS determines that release of the CHRI is not consistent with purposes of the Family Code, the district must withhold Exhibit B in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 (1986) (addressing statutory predecessor to Fam. Code § 261.201).

Section 552.101 also encompasses section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined that a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. Upon review, we agree that Exhibit C consists of evaluations. We note, however, that the evaluations pertain to a teacher’s aide. Accordingly, as these documents do not evaluate “the performance of a teacher or administrator” as defined by Open Records Decision No. 643, this information may not be withheld under section 21.355.

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<sup>3</sup>The 79<sup>th</sup> Texas legislature passed House Bill 1116, which required the transfer of SBEC’s administrative functions and services to the TEA, effective September 1, 2005.

In summary, if CPS determines that release of the CHRI is consistent with the Family Code, then the CHRI in Exhibit B must be released to the requestor.<sup>4</sup> The remaining information in Exhibit B, however, must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. If, however, CPS determines that release is not consistent with the purposes of the Family Code, then Exhibit B must be withheld in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The remaining information must be released to the requestor.<sup>5</sup>

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).

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<sup>4</sup>We note that, because the requestor may have a special right of access to this information in this instance, the district must again seek a decision from this office if it receives another request for the same information from another requestor.

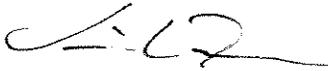
<sup>5</sup>We note that this information contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/ma

Ref: ID# 281412

Enc. Submitted documents

c: Ms. Tracy Thomas  
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