



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 1, 2007

Ms. Stephanie S. Rosenberg  
General Counsel  
Humble Independent School District  
P.O. Box 2000  
Humble, Texas 77347-2000

OR2007-09768

Dear Ms. Rosenberg:

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# 285667.

The Humble Independent School District (the "district") received a request for information relating to incidents that occurred at a specified school during the 2006-2007 school year that resulted in calls to the district police department or the Humble Police Department, including information pertaining to a named individual.<sup>1</sup> 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 sections 552.101, 552.108, and 552.130 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

<sup>2</sup>Although you initially raise sections 552.114 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Thus, the district has waived its claims under section 552.114. See Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested). Also, although you raise section 552.026 of the Government Code as an exception to disclosure, we note that section 552.026 is not an exception to disclosure. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with FERPA. Gov't Code § 552.026.

Recently, the United States Department of Education Family Policy Compliance Office 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>3</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”). You have submitted, among other things, redacted education records for our review. 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. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>4</sup> We will, however, address the applicability of the remaining claimed exceptions to 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 information protected by other statutes, such as 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.

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<sup>3</sup>A copy of this letter may be found on the Office of the Attorney General’s website at [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

<sup>4</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.

Fam. Code § 261.201(a). The submitted information consists of the district police department's investigation of alleged or suspected child abuse. Because the submitted information consists of files, reports, records, communications, or working papers used or developed in investigations under chapter 261, the information is within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining "abuse" for the purposes of chapter 261 of the Family Code). You state that the district has not adopted a rule that governs the release of this type of information. Therefore, the submitted information is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district must withhold the submitted information from disclosure under section 552.101 of the Government Code as information made confidential by law.

In summary, this ruling does not address the applicability of FERPA to the submitted information. Should the district determine that all or portions of the submitted information consists of "education records" that must be withheld under FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act. The district must withhold the submitted information from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

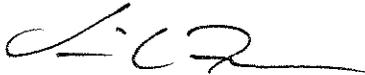
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,



Jaime L. Flores  
Assistant Attorney General  
Open Records Division

JLF/ma

Ref: ID# 285667

Enc. Submitted documents

c: Ms. Melody Mackert  
7418 Maple Walk  
Humble, Texas 77346  
(w/o enclosures)