



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 23, 2009

Mr. S. Anthony Safi  
Mounce, Green, Myers, Safi, Paxson, & Galatzan  
P.O. Box 1977  
El Paso, Texas 79950-1977

OR2009-05391

Dear Mr. Safi:

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# 340717.

The El Paso Independent School District (the "district"), which you represent, received a request for information pertaining to child abuse allegations made against the requestor. You state you have redacted some of the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim that the submitted documents are excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed 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

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<sup>1</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, unredacted, 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 website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Code § 552.101. This exception encompasses information that another statute makes confidential. Section 261.201(a) of the Family Code provides as follows:

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, audiotapes, videotapes, 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, you represent to this office that the district forwarded the submitted documents to the Child Protective Services Division of the Texas Department of Family and Protective Services (“DFPS”) and that DFPS is using these documents in a pending child abuse investigation. *See id.* § 261.406 (providing that, upon receipt of a report of alleged or suspected abuse or neglect of a child in a public or private school under the jurisdiction of the Texas Education Agency, [DFPS] shall perform an investigation as provided by [chapter 261 of the Family Code]). Based on your representations, we agree the submitted information is within the scope of section 261.201. You do not inform us that district has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that the information at issue is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. *See Open Records Decision No. 440 at 2 (1986)* (predecessor statute). As our ruling is dispositive, we need not address your remaining argument against disclosure.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,

A handwritten signature in black ink, appearing to read "Reg Hargrove". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Reg Hargrove  
Assistant Attorney General  
Open Records Division

RJH/eeg

Ref: ID# 340717

Enc. Submitted documents

c: Requestor  
(w/o enclosures)