



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 29, 2009

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

OR2009-05698

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# 341330.

The El Paso Independent School District (the "district"), which you represent, received a request for eight categories of information pertaining to a specified employee and complaint. You state the district has released most of the requested information. You state the district is redacting some of the responsive information pursuant to the federal Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim portions of the remaining information 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 Code § 552.101. This section encompasses information protected by statutes. Section 261.201(a) of the Family Code provides in relevant part:

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<sup>1</sup>We note our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made; therefore, we will not address the applicability of FERPA to any of the submitted information.

(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, 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). You claim the pages labeled 9, 10, 38, and 39 pertain to an investigation of child abuse. 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). You state, however, page 9 was provided to the Texas Department of Family and Protective Services (“DFPS”) as part of an investigation conducted by DFPS of suspected child abuse. You indicate page 9 is a working paper used by DFPS in its chapter 261 investigation. Based on your representation and our review, we agree page 9 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); *see also id.* § 101.003(a) (defining “child” for purposes of this section as 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). You have not indicated DFPS 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 page 9 must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). You also claim pages 10, 38, and 39 contain the identifying information of a person who reported suspected child abuse to Child Protective Services. Section 261.201 makes confidential the identity of a person reporting alleged or suspected child abuse. *See id.* § 261.201(a)(1). Therefore, the district must also withhold the information we have marked in page 38 under section 552.101 in conjunction with section 261.201(a)(1) of the Family Code.<sup>2</sup> You do not explain, however, how the remaining information in pages 10, 38, or 39 were used or developed in an investigation of child abuse or neglect or contain the identifying information of an individual who reported child abuse for the purposes of chapter 261. Thus, the district has not established that section 261.201 is applicable to the remaining information in pages 10, 38, and 39. Accordingly, the district may not withhold this information under section 552.101 in conjunction with section 261.201 of the Family Code.

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

You claim portions of the remaining information are subject to section 552.135 of the Government Code. Section 552.135 provides as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You seek to withhold the highlighted portions of pages 2, 3, and 4 under section 552.135. You state that the highlighted information identifies a district employee who reported a possible violation of law to the district. We note the individual reported an alleged assault. Therefore, the district must withhold the information we have

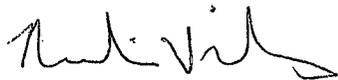
marked under section 552.135 of the Government Code. You have failed to demonstrate how the remaining information at issue reveals the identity of an informer. Therefore, the remaining information at issue may not be withheld under section 552.135.

In summary, the district must withhold page 9, and the information we have marked in page 38 under section 552.101 in conjunction with section 261.201 of the Family Code. The district must withhold the information we have marked in pages 2, 3, and 4 under section 552.135 of the Government Code. The remaining information must be released.

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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/dls

Ref: ID# 341330

Enc. Submitted documents

c: Requestor  
(w/o enclosures)