



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2011

Ms. Paige C. Kyle
Walsh, Anderson, Brown, Gallegos and Green P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2011-00514

Dear Ms. Kyle:

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# 405570.

The Judson Independent School District (the "district"), which you represent, received a request for the personnel file of a named educator, statements gathered during a specified investigation, and any information pertaining to the specified investigation that was forwarded to the Judson Police Department or the Texas Department of Family and Protective Services. You state that some of the submitted information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have only submitted information pertaining to the specified investigation. Thus, to the extent any information responsive to the request for the named

¹The 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>.

educator's personnel file existed when the present request was received, we assume it has been released. If such information has not been released, then it must be released at this time. *See Gov't Code* §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

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) Except as provided by Section 261.203, 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.

(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.

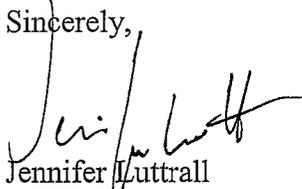
Fam. Code § 261.201(a). You seek to withhold portions of the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, you state the submitted information pertains to an investigation of an alleged injury to a child conducted by the district's police department. *See id.* § 261.001(1) (defining "abuse" for purposes of Fam. Code ch. 261), Penal Code § 22.04(c) (defining "child" for purposes of injury to a child as a person 14 years of age or younger). Further, you state this matter was referred to the Child Protective Services Division ("CPS") of the Texas Department of Family and Protective Services and that CPS is conducting its own investigation. Upon review, we find the entirety of the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated the district's police department has adopted a rule governing the release of this type of information. Accordingly, we assume no such rule exists. Given that assumption, the submitted

information is confidential under section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.²

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, 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, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/dls

Ref: ID# 405570

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.