



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 8, 2011

Ms. Pam Kaminsky
Attorney
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2011-09717

Dear Ms. Kaminsky:

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# 423115.

The Fort Bend Independent School District (the "district") received a request for the requestor's client's personnel file, documents concerning the client that were sent to the Texas Education Agency or the State Board for Educator Certification, documents pertaining to any investigations of the client for alleged misconduct, and a copy of the district's Office of Professional Responsibility report. You state the district is releasing some of the requested information. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the submitted information was created after the request was received. This information, which we have marked, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, 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.¹ 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”). FERPA, however, is generally not applicable to law enforcement records maintained for a law enforcement purpose. *See id.* § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted information includes an unredacted education record. Because our office is prohibited from reviewing this record to determine whether appropriate redactions under FERPA should be made, we will not address the applicability of FERPA to this record. Such determinations under FERPA must be made by the educational authority in possession of such records.² We will, however, address the applicability of the claimed exceptions to the submitted information.

Section 552.101 of the Government Code exempts 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); *see also id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We note the district is not an agency authorized to conduct an investigation under chapter 261. *See id.* § 261.103 (listing agencies that may conduct

¹A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²In 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.

child abuse investigations). However, you indicate that the submitted information pertains to an investigation of alleged or suspected child abuse by the district's police department, which is an agency authorized to conduct investigations under chapter 261. You seek to withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Upon review, we find that most of the submitted information, which we have marked, is within the scope of section 261.201 of the Government Code. You do not indicate that the district's police department has adopted a rule that governs the release of this type of information. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³

However, the remaining information consists of a letter to the State Board for Educator Certification that was created by the district's superintendent. You do not explain, and we are unable to discern, that this information constitutes a report of alleged or suspected child abuse or neglect under chapter 261 or that this information was used or developed in an investigation under chapter 261. Accordingly, we conclude the district may not withhold this letter under section 552.101 in conjunction with section 261.201(a) of the Family Code. However, section 552.101 also encompasses section 261.101 of the Family Code, which provides that the identity of an individual making a report under chapter 261 is confidential. *See id.* § 261.101(d). Accordingly, the information we have marked is confidential under section 261.101(d) of the Family Code and must be withheld under section 552.101 of the Government Code.

You claim the remaining information in the letter is excepted from disclosure under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). By its terms, section 552.108 applies only to a law enforcement agency or a prosecutor. A school district is not a law enforcement agency. Accordingly, you have failed to demonstrate that section 552.108 applies. *But see* Open Records Decision No. 474 (1987) (predecessor statute to section 552.108(a)(1) may be invoked by a proper custodian when a criminal incident is still under active investigation or prosecution and law enforcement entity represents that release of records will interfere with investigation or prosecution). Therefore, the district may not withhold any of the remaining information in the letter under section 552.108(a)(2) of the Government Code.

³As our ruling as to this information is dispositive, we need not address your remaining argument against its disclosure.

In summary, in conjunction with section 552.101 of the Government Code, the district must withhold the information we have marked under sections 261.201(a) and 261.101(d) of the Family Code. The district must release the remaining submitted information.⁴

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/bs

Ref: ID# 423115

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴We note that this requestor has a special right of access under section 552.023 of the Government Code to some of the information being released. See Gov't Code § 552.023(a). Therefore, if the district receives another request for this information from a person who does not have a special right of access to this information, the district should resubmit this same information and request another decision from this office. See *id.* §§ 552.301(a), .302; Open Records Decision No. 673 (2001).