



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 19, 2011

Mr. Leonard J. Schwartz  
General Counsel  
Texas School for the Deaf  
1102 South Congress Avenue  
Austin, Texas 78704

OR2011-15256

Dear Mr. Schwartz:

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# 433505.

The Texas School for the Deaf (the "school") received a request for seven categories of information pertaining to a named individual and incidents of sexual misconduct involving employees or students since 2006. You state the school has provided some of the requested information to the requestor. You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you acknowledge, and we agree, the submitted information includes unredacted student education records. The United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and, therefore, does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

review in the open records ruling process under the Act.<sup>2</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”). Thus, because this office is prohibited from reviewing an education record for the purpose of determining whether appropriate redactions have been made under FERPA, we will not address the applicability of FERPA to the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education records. We will consider whether or not the information at issue is excepted from disclosure under the Act.

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. This section encompasses information made confidential by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act], 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 state the records submitted as Exhibits TSD-4 through TSD-30 were used or developed in investigations of alleged child abuse or neglect. *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261); *see also id.* § 261.003 (stating Fam. Code ch. 261 applies to investigation of reported abuse or neglect of student, without regard to age of student, in Texas School for the Deaf). Based on your representations and our review, we find the records at issue are subject to section 261.201 of the Family Code. You have not indicated the school has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, the school must withhold Exhibits TSD-4 through TSD-30 and the records they represent under section 552.101 of the Government Code in conjunction

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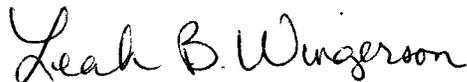
<sup>2</sup>A copy of this letter may be found on the attorney general’s website, <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

with section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

You request this office issue a “previous determination” that would permit the school in the future to withhold from disclosure information used or developed in investigations by the school of alleged child abuse or neglect under section 261.201 of the Family Code, without the need of requesting a ruling from us about whether such information can be withheld from disclosure. We decline to issue such a previous determination at this time. Accordingly, 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, toll free, at (888) 672-6787.

Sincerely,



Leah B. Wingerson  
Assistant Attorney General  
Open Records Division

LBW/dls

Ref: ID# 433505

Enc. Submitted documents

c: Requestor  
(w/o enclosures)