



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 19, 2013

Mr. Robb D. Decker
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2013-02736

Dear Mr. Decker:

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# 478991.

The Northside Independent School District (the "district"), which you represent, received a request for statements, notes, and reports pertaining to a named individual's allegations against the requestor's client. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the district has redacted student-identifying information in the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ We note FERPA is not applicable to law enforcement records maintained by the district's police department (the "department") that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Upon review, we find the records labeled AG-0001 through AG-0005 are law enforcement records that relate to an investigation by the department and are maintained by the department. Thus, these records are not subject to FERPA, and no portion of these records may be withheld on that basis.

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>.

Because we are able to discern the nature of the redacted information, we are not prevented from determining whether that information falls within the scope of the district's exceptions to disclosure. Accordingly, we will address the district's arguments with respect to the information at issue, including the redacted information. Nevertheless, we caution the district that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information to be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of specific information requested or representative sample if information is voluminous).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses information protected by other statutes, such as section 261.201(a) of the Family Code, which provides:

(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). Upon review, we find the records labeled AG-0001 through AG-0005 were used or developed in an investigation by the department of alleged or suspected child abuse or neglect and the records labeled AG-0006 through AG-0011 consist of a report of alleged or suspected abuse or neglect made to Child Protective Services Division of the Texas Department of Family and Protective Services ("CPS"). *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Fam. Code ch. 261); *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 the department has adopted a rule that governs the release of this type of information; therefore, we assume no such regulation exists. Given that assumption, the district must withhold the records labeled AG-0001 through AG-0011 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986)

²As our ruling is dispositive, we need not address your remaining arguments for this information.

(predecessor statute). We note, however, the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. Fam. Code § 261.103 (listing agencies that may conduct child abuse investigations). The record labeled as AG-0012 appears to consist of notes generated by the district for its administrative investigation. You do not explain, and we cannot discern, whether this document was used by the department or by CPS in an investigation under chapter 261. *See id.* § 261.201(a)(2). Thus, we conclude you have failed to demonstrate how any of the information in the record labeled as AG-0012 constitutes information used or developed in an investigation under chapter 261. Consequently, the district may not withhold any of the information in the record labeled as AG-0012 under section 552.101 in conjunction with section 261.201. As no further exceptions to disclosure are raised for this information, the record labeled as AG-0012 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, 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,



Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/tch

Ref: ID# 478991

Enc. Submitted documents

c: Requestor
(w/o enclosures)