



January 8, 2015

Mr. Miguel Salinas  
Staff Attorney  
Brownsville Independent School District  
1900 Price Road  
Brownsville, Texas 78521-2417

OR2015-00342

Dear Mr. Salinas:

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#549276 (Brownsville ISD No. 07918).

The Brownsville Independent School District (the "district") received a request for any information related to a specified investigation. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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.<sup>1</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

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<sup>1</sup>A 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>.

“personally identifiable information”). You state disclosure of the submitted information may be a violation of FERPA and thus should not be released.

In this instance, the submitted information was created and is maintained by the district’s police department for a law enforcement purpose. FERPA is not applicable to records that were created by a law enforcement unit of an educational agency or institution for a law enforcement purpose and that are maintained by the law enforcement unit. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Accordingly, because the information at issue is maintained by the district’s police department for law enforcement purposes, the information does not constitute an education record subject to FERPA, and no portion of it may be withheld on that basis. Likewise, we do not address your argument under section 552.114 of the Government Code. *See* Gov’t Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting “student records” from disclosure); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 and FERPA). However, we will address the applicability of your remaining claimed exceptions to 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. Section 552.101 encompasses information protected by other statutes, including section 261.201 of the Family Code, which provides in part:

(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; 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.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information

under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

(1) any personally identifiable information about a victim or witness under 18 years of age unless that victim or witness is:

(A) the child who is the subject of the report; or

(B) another child of the parent, managing conservator, or other legal representative requesting the information;

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). 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, the submitted information pertains to an investigation of alleged or suspected abuse conducted by the district's police department, which is an agency authorized to conduct investigations under chapter 261. Upon review, we find the submitted information was used or developed in an investigation of alleged or suspected child abuse. *See id.* §§ 261.001 (defining "abuse" for purposes of chapter 261 of the Family Code), 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. However, we note the requestor is a parent of one of the child victims listed in the information, and is not alleged to have committed the abuse. *See id.* § 261.201(k). Therefore, the district may not withhold the submitted information from the requestor under section 261.201(a) of the Family Code. *See id.* § 261.201(k). However, section 261.201(l)(1) states the personally identifiable information of a victim or witness who is under the age of eighteen and is not a child of the parent, managing conservator, or other legal representative requesting the information must be withheld from disclosure. *Id.* § 261.201(l)(1). Further, section 261.201(l)(3) states the identity of the reporting party must be withheld. *Id.* § 261.201(l)(3). Thus, the district must redact the identifying information of the victim who is not the requestor's child and the identity of the person who made the report, which we have marked, pursuant to subsections 261.201(l)(1) and (l)(3). Further, the district must redact any information that is otherwise excepted from required disclosure under the Act pursuant to section 261.201(l)(2). *Id.* § 261.201(l)(2). Thus, we will address the district's arguments against disclosure of the remaining information.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code, which provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

*Id.* § 58.007(c). Section 58.007(c) is applicable to law enforcement records of juvenile delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997. *See id.* § 51.03(a)-(b) (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of section 58.007). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Section 58.007(c) does not apply to law enforcement records that relate to a juvenile only as a complainant, victim, witness, or other involved party; rather, the juvenile must be involved as a suspect, offender, or defendant. *See id.* § 58.007(c). Upon review, we find the submitted information does not involve a juvenile identified as a suspect, offender, or defendant. Therefore, we find that you have failed to demonstrate the applicability of section 58.007 to the submitted information, and it may not be withheld under section 552.101 of the Government Code on this basis.

Section 552.108(a)(1) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). The district states the submitted information relates to a pending criminal investigation by the district’s police department. Based on this representation and our review, we find release of the submitted information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are

present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, we find section 552.108(a)(1) is applicable to the remaining information.

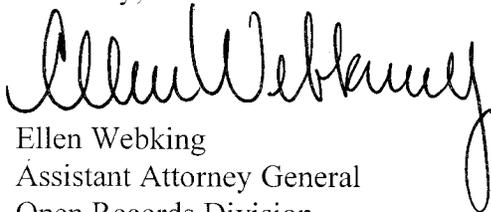
However, section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic "front-page" information held to be public in *Houston Chronicle*. See 531 S.W.2d at 186-187; *see also* Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Accordingly, with the exception of the basic information, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, with the exception of the basic information, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code. In releasing basic information, the district must withhold the identifying information we have marked under section 552.101 of the Government Code in conjunction with subsections 261.201(l)(1) and (l)(3) of the Family Code. The district must release the remaining information to this requestor.<sup>2</sup>

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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Ellen Webking  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We note the requestor has a special right of access to the basic information that is being released. See Fam. Code § 261.201(k). Because such information is confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.

Ref: ID# 549276

Enc. Submitted documents

c: Requestor  
(w/o enclosures)