



January 28, 2015

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2015-01659

Dear Ms. McGowan:

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# 552998 (ORR# 13586).

The Dallas Independent School District (the "district") received a request for the employment files of a named district employee. You state the district will release some of the requested information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 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 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 or an adult student's 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"). You have submitted unredacted education records for our review. Because our office is prohibited

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

from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your arguments against disclosure of the submitted information.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in part, as follows:

(a) [T]he 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.

Fam. Code § 261.201(a); *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), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). You argue the submitted information is confidential under section 261.201. We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). You state the information was obtained from the Dallas Police Department, the Texas Department of Family and Protective Services (“DFPS”), or the district’s police department (the “department”). You also state the district has on staff an employee who is shared with DFPS to receive and investigate child abuse claims. Upon review, we find portions of the submitted information, which we have marked, consist of reports of alleged or suspected abuse made to DFPS or to the department. However, we are unable to determine the age of the victim listed in the information at issue. Thus, we must rule in the alternative. If the victim listed in the information we marked was under 18 years of age at the time of the incidents in question, then the marked information is confidential under section 261.201(a) of the Family Code, and the district must withhold it under section 552.101 of the Government Code. If the victim listed in the marked information was 18 years of age or older at the time of the incidents in question, then the marked information is not subject to chapter 261 of the Family Code and the district may not withhold the information under section 552.101 of the Government Code on that basis.

Further, upon review, we find you have failed to demonstrate how any portion of the remaining information was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, you have not established the remaining information is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). Therefore, the district may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

To the extent the information we marked is not subject to chapter 261 of the Family Code, some of the information at issue may be subject to section 58.007 of the Family Code, which is also encompassed by section 552.101 of the Government Code. Section 58.007(c) makes confidential juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, and reads as follows:

(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.

Fam. Code § 58.007(c). 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). The information at issue, which we have marked, involves delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. However, we are unable to determine the ages of the suspects at issue. Thus, we must rule in the alternative. If any suspect listed in the information we marked was between 10 and 16 years of age at the time of the incident in question, then the marked information is confidential under section 58.007(c) of the Family Code, and the district must withhold it under section 552.101 of the Government Code. If no suspect listed in the marked information was between 10 and 16 years of age at the time of the incidents in question, then the marked information is not confidential under section 58.007(c) of the Family Code and the district may not withhold the information under section 552.101 of the Government Code on that basis.

Section 552.135 of the Government Code provides in relevant part the following:

(a) "Informer" means a student or a former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, witnesses and other individuals who provide information in the course of an investigation are not informants for purposes of section 552.135 of the Government Code. We also note parents and other family members of students are not informants for purposes of section 552.135. You state the submitted information identifies students and employees who reported an alleged violation of criminal and civil laws. Based on your representations and our review, we conclude to the extent the information at issue is not otherwise confidential under either section 261.201 or section 58.007(c) of the Family Code, the district must withhold the information we have marked under section 552.135 of the Government Code. However, the district has failed to demonstrate how any of the remaining information at issue reveals the identity of an informer for the purposes of section 552.135 of the Government Code. Therefore, the district may not withhold the remaining information on that ground.

Section 552.101 of the Government Code also encompasses section 261.101(d) of the Family Code, which provides the identity of an individual making a report under chapter 261 is confidential. *See Fam. Code* § 261.101(d). As noted above, 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). Upon review, we find none of the remaining

information contains the identifying information of an individual who made a report under chapter 261 of the Family Code. Thus, the district may not withhold any of the remaining information under section 552.101 in conjunction with section 261.101(d).

In summary, if the victim listed in the information we marked was under 18 years of age at the time of the incidents in question, then the district must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the information at issue is not confidential under section 261.201 of the Family Code, then if any suspect listed in the information we marked was between 10 and 16 years of age at the time of the incident in question, then the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. Further, to the extent the information at issue is not otherwise confidential under either section 261.201 or section 58.007(c) of the Family Code, the district must withhold the information we marked under section 552.135 of the Government Code. The district must release the remaining information.

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, 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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 552998

Enc. Submitted documents

c: Requestor
(w/o enclosures)