



February 23, 2015

Mr. Tony Torres
Counsel for the San Benito C.I.S.D.
Flores & Torres, L.L.P.
118 East Cano Street
Edinburg, Texas 78539

OR2015-03548

Dear Mr. Torres:

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# 559075.

The San Benito Consolidated Independent School District (the "district"), which you represent, received two requests from different requestors for information pertaining to case number 1412110717. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we address your claim that the submitted information contains education records that must be withheld under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232. These provisions apply only to student records in the custody of educational institutions and to records directly transferred from an educational institution to a third party. *See* 34 C.F.R. §§ 99.33(a)(2), 99.3 (defining "student"). The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office 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.¹

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>.

See 34 C.F.R. § 99.3 (defining “personally identifiable information”). However, we note FERPA is not applicable to law enforcement records maintained by the district’s police department (the “department”) for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted information consists of an investigation conducted by the department. Further, you indicate this information is maintained by the department for law enforcement purposes. Accordingly, the submitted information constitutes law enforcement records created and maintained by the department for law enforcement purposes. As such, this information is not an education record subject to FERPA, and the district may not withhold any of the submitted information on that basis. However, we will address your remaining arguments for this 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 58.007 of the Family Code, which makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997. Fam. Code § 58.007(c). The relevant portion of section 58.007 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). *See also id.* § 51.02(2) (defining “child” as a person who is ten years of age or older and younger than seventeen years of age at the time of the reported conduct). Upon review, we find the submitted information involves delinquent conduct by a child that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of section 58.007). Further, it does not appear that any of the exceptions in section 58.007 apply. Therefore, the submitted 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.²

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,



Britni Fabian
Assistant Attorney General
Open Records Division

BF/bhf

Ref: ID# 559075

Enc. Submitted documents

c: Requestors
(w/o enclosures)

²As our ruling is dispositive, we need not address your remaining arguments against disclosure.