



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 31, 2015

Mr. Mark Neal
Associate Superintendent for Legal and Human Resources
Abilene Independent School District
P.O. Box 981
Abilene, Texas 79604

OR2015-06111

Dear Mr. Neal:

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# 558060.

The Abilene Independent School District (the "district") received a request for e-mails sent from two named individuals to the Abilene Police Department during a specified period of time.¹ You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.103 and 552.114 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

¹ You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S. W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² We note although you claim portions of the submitted information are excepted from disclosure under section 552.305 of the Government Code, section 552.305 is not an exception to disclosure; instead, it permits a governmental body to decline to release information for the purpose of requesting an attorney general decision if it believes that a person's privacy or property interests may be involved. *Id.* § 552.305(a); Open Records Decision No. 542 at 1-3 (1990) (discussing statutory predecessor).

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code, does not permit a state educational agency or institution 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.³ Consequently, state and local education 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”). In this instance, you have submitted unredacted education records for our review. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to any of the information at issue. Such determinations under FERPA must be made by the educational authority in possession of such records.⁴ Likewise, we do not address your argument under section 552.114 of the Government Code. *See* Gov’t Code §§ 552.026 (incorporating FERPA into Act), .114 (excepting from disclosure “student records”); Open Records Decision No. 539 (1990) (determining same analysis applies under section 552.114 and FERPA). We will, however, consider the applicability of the district’s remaining argument to the 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.”⁵ 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

³ 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>.

⁴ In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

⁵ The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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 submitted information consists of a report of alleged or suspected child abuse or neglect reported to the City of Abilene's police department. *See 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 (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Therefore, we conclude the submitted information is confidential pursuant to section 261.201(a)(1) of the Family Code, and the district must withhold it under section 552.101 of the Government Code.⁶ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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,



Katelyn Blackburn-Rader
Assistant Attorney General
Open Records Division

KB-R/akg

Ref: ID# 558060

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁶ As our ruling is dispositive, we need not address your argument against disclosure of this information.

