



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Mr. Gustavo L. Acevedo, Jr.  
Counsel for the Raymondville Independent School District  
814 Del Oro Lane  
Pharr, Texas 78577

OR2015-09100

Dear Mr. Acevedo:

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# 563001.

The Raymondville Independent School District (the "district"), which you represent, received a request for specified reports, complaints, and video recordings. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code and section 552.108 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

You contend the submitted information consists of student records subject to FERPA. The United States Department of Education Family Policy Compliance Office 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

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<sup>1</sup>Although you raise section 552.026 of the Government Code, we note section 552.026 is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with FERPA. Gov't Code § 552.026.

the Act.<sup>2</sup> See 34 C.F.R. § 99.3 (defining “personally identifiable information”). However, FERPA is not applicable to law enforcement records maintained by the district’s police department (the “department”) for law enforcement purposes. 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3 (defining “education record”), .8. The submitted information consists of department case reports. Accordingly, because the information is maintained by a law enforcement unit of an educational agency, the information does not constitute an education record subject to FERPA and no portion of it may be withheld on that basis.

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. This section encompasses information protected by other statutes. Section 261.201 of the Family Code provides, in relevant 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.

...

(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.

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<sup>2</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>.

(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:

...

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

Fam. Code § 261.201(a), (k), (l)(2). Upon review, we find report numbers 15-027J, 14-140J, 14-176, and 14-142J consist of information used or developed in an investigation of alleged or suspected child abuse conducted by the 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(1) (defining “abuse” for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. Thus, we conclude report numbers 15-027J, 14-140J, 14-176, and 14-142J are generally confidential pursuant to section 261.201(a) of the Family Code. Consequently, the district must withhold report number 14-142J under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>3</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, we note the requestor is a parent of the child victim listed in report numbers 15-027J, 14-140J, and 14-176 and is not alleged to have committed the abuse. Thus, pursuant to section 261.201(k), the information at issue may not be withheld from this requestor on the basis of section 261.201(a). *See* Fam. Code § 261.201(k). However, section 261.201(l)(2) states any information that is excepted from required disclosure under the Act or other law must still be withheld from disclosure. *Id.* § 261.201(l)(2). We note the information at issue is also subject to section 58.007 of the Family Code. Accordingly, we will consider the applicability of this section to the information at issue.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007(c) of the Family Code, which 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:

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<sup>3</sup>As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

- (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). 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 involves juvenile delinquent conduct that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the district must withhold report numbers 15-027J, 14-140J, and 14-176 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code.<sup>4</sup>

Next, we note the remaining information includes a court-filed document that is subject to section 552.022 of the Government Code. Section 552.022(a)(17) provides for required public disclosure of “information that is also contained in a public court record,” unless the information is expressly made confidential under the Act or other law. Gov’t Code § 552.022(a)(17). Although you seek to withhold this information under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body’s interests and does not make information confidential under the Act. *See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov’t Code § 552.108 subject to waiver).* Therefore, the court-filed document, which we have marked, may not be withheld under section 552.108. As you raise no further exceptions to disclosure of the court-filed document we have marked, it must be released pursuant to section 552.022(a)(17) of the Government Code. However, we will address your argument under section 552.108 for the remaining information.

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 . . . 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(a)(1) must reasonably explain how and why the

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<sup>4</sup>As our ruling is dispositive, we need not consider your remaining argument against disclosure of this information.

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). You generally state the remaining information deals with the detection, investigation, or prosecution of crime. However, you do not inform us the remaining information relates to an open or pending criminal investigation or otherwise explain how release of the information would interfere with law enforcement. Therefore, the district may not withhold the remaining information under section 552.108(a)(1) of the Government Code.

In summary, the district must release the court-filed document we have marked pursuant to section 552.022(a)(17) of the Government Code. The district must withhold report number 14-142J under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code and report numbers 15-027J, 14-140J, and 14-176 under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. The district must release the remaining information.<sup>5</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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/cbz

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<sup>5</sup>We note the requestor has a special right of access to some of the information being released. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, 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# 563001

Enc. Submitted documents

c: Requestor  
(w/o enclosures)