



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 18, 2015

Mr. John J. Janssen  
General Counsel  
Office of Legal Services  
Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2015-17044

Dear Ms. Janssen:

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# 575908.

The Corpus Christi Independent School District (the "district") received a request for information regarding a named individual including her personnel file, all documents relating to any investigation of misconduct relating to the named individual, and all documents sent to the Texas Education Agency (the "TEA") or State Board for Educator Certification concerning the named individual. You state you have released some information. You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.135 of the Government Code.<sup>1</sup> You also state you notified the TEA of the request for information and its right to submit arguments to this office as to why the submitted information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the TEA. We have considered the submitted arguments 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"),

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<sup>1</sup>Although you also raise sections 552.102, 552.103, 552.107, and 552.108 for the submitted information, you provide no arguments explaining how these exceptions are applicable to the information at issue. Therefore, we assume you no longer assert these exceptions. *See* Gov't Code §§ 552.301, .302.

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.<sup>2</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 "personally identifiable information"). You assert FERPA applies to portions of the submitted documents. Because our office is prohibited from reviewing these 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.<sup>3</sup> *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the district. Likewise, we do not address your claim under section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), 552.114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). However, we will consider your remaining arguments against disclosure of 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. This section encompasses information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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). We note portions of Exhibit C were used or developed in an investigation by the district's police department of suspected child abuse and neglect under chapter 261 of the Family Code. *See id.* §§ 101.003(a) (defining "child" for purposes of

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<sup>2</sup>A 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>.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure.

section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, the information we marked is within the scope of section 261.201(a). You have not indicated the district’s police department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>4</sup>

Section 552.116 of the Government Code provides:

(a) An audit, working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) “Audit” means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

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

Gov't Code § 552.116. The TEA states the information we marked consists of audit working papers prepared or maintained by its Division of Investigations and Fingerprinting in conjunction with a pending investigation of alleged educator misconduct. The TEA informs us the investigation is authorized by sections 21.031 and 21.041 of the Education Code and section 249.14 of title 19 of the Texas Administrative Code. *See* Educ. Code §§ 21.031(a), .041(b); 19 T.A.C. § 249.14(a) (TEA may obtain and investigate information concerning an educator's alleged improper conduct). Based on the TEA's representations, we agree section 552.116 is applicable to the information we marked. Therefore, the district may withhold the information we marked under section 552.116 of the Government Code.

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The district may withhold the information we marked under section 552.116 of the Government Code. The remaining information must be released.

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,



Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/som

Ref: ID# 575908

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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