



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 1, 2015

Ms. Stephanie E. Maher  
Counsel for New Caney Independent School District  
Rogers Morris & Grover, L.L.P.  
5718 Westheimer Road, Suite 1200  
Houston, Texas 77057

OR2015-18282

Dear Ms. Maher:

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# 578195.

The New Caney Independent School District (the "district"), which you represent, received a request for a specified report. The district states it is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> The district also indicates it has redacted a personal e-mail address under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> The district states it has released some of the requested information, but claims the

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<sup>1</sup>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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the claimed exception and reviewed the submitted representative sample of information.<sup>3</sup>

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 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.

...

(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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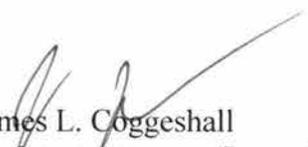
<sup>3</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office. We also note the district did not comply with the requirements of section 552.301(e-1) of the Government Code. *See* Gov’t Code § 552.301(e-1). Nevertheless, section 552.101 of the Government Code is a mandatory exception that can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider the district’s claim under that section.

Fam. Code § 261.201(a), (k). 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). Nevertheless, the district informs us the submitted information contains a witness statement that a school administrator read to Child Protective Services (“CPS”) over the telephone. Thus, the district asserts this statement was used or developed in an investigation by CPS under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find this information, which we have marked, is within the scope of section 261.201(a). Although the requestor is a parent of the child victim, the requestor was suspected of committing the alleged or suspected abuse. Therefore, we determine the requestor does not have a right of access to this information under section 261.201(k). *See id.* § 261.201(k). Accordingly, we conclude the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). The district asserts the remaining information is also confidential under section 261.201 because it consists of the handwritten notes of the administrator who made the report to CPS regarding the incident at issue and such information could be used to identify that individual. However, we find the district has not established any of the remaining information is confidential under section 261.201(a) of the Family Code, and the district may not withhold it under section 552.101 on that ground. Accordingly, the district must release the remaining information to the requestor.

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,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/cbz

Ref: ID# 578195

Enc. Submitted documents

c: Requestor  
(w/o enclosures)