



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 26, 2016

Mr. Miguel Salinas  
Staff Attorney  
Brownsville Independent School District  
1900 Price Road  
Brownsville, Texas 78521-2417

OR2016-01881

Dear Mr. Salinas:

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# 595674 (Brownsvilled ISD No. 8320).

The Brownsville Independent School District Police Department (the "department") received a request for seven categories of information related to a specified incident. 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.

We note the department indicates it has redacted student-identifying information in the submitted responsive information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> However, FERPA is not applicable to law enforcement records that are maintained and created by the department for

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") 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 the Act. The DOE has determined that 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>.

a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted information reflects it consists of records that were created by the department for the purpose of law enforcement. Thus, these records are not subject to FERPA, and the department may not withhold any portion of them on that basis. Because we are able to discern the nature of the redacted information, we are not prevented from determining whether that information falls within the scope of the department's exceptions to disclosure. Accordingly, we will address the department's arguments with respect to the information at issue, including the redacted information. Nevertheless, we caution the department that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information to be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of specific information requested or representative sample if information is voluminous).

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." Gov't Code § 552.101. This section encompasses information protected by section 261.201 of the Family Code, which 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 used or developed in an investigation under this chapter or in providing services as a result of an investigation.

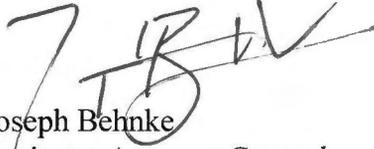
Fam. Code § 261.201(a). The submitted information reflects it relates to an investigation of alleged or suspected child abuse or neglect conducted by the department. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the department must withhold the submitted information under section 552.101 of the Government Code in conjunction with

section 261.201 of the Family Code.<sup>2</sup> 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](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,

  
Joseph Behnke  
Assistant Attorney General  
Open Records Division

JB/som

Ref: ID# 595674

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>2</sup>As our ruling is dispositive, we need not address your arguments against disclosure of the submitted information.