



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 29, 2016

Ms. Karla Schultz
Counsel for the Liberty Hill Independent School District
Walsh, Gallegos, Trevino, Russo & Kyle, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2016-06963

Dear Ms. Schultz:

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# 603312.

The Liberty Hill Independent School District (the "district"), which you represent, received a request for all documents pertaining to the requestor's child.¹ You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the submitted information includes redacted and unredacted education records. The United States Department of Education Family Policy Compliance Office (the "DOE") 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 state and

¹You state the district received clarification of the request. *See* Gov't Code § 552.222(b) (stating if information requested is unclear or large amount has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²Although you raise section 552.101 of the Government Code in conjunction with section 552.135 of the Government Code, this office has conclude section 552.101 does not encompass other exceptions found in the Act. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Additionally, although you also raise sections 552.108 and 552.111 of the Government Code, you have provided no arguments explaining how these exceptions are applicable to the submitted information. Therefore, we assume you no longer assert these exceptions. *See* Gov't Code §§ 552.301(e)(1)(A), .302.

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.³ 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”). Determinations under FERPA must be made by the educational authority in possession of the education records. Therefore, because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address the applicability of FERPA to the submitted education records.

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 exception encompasses information other statutes make confidential, such as section 261.201 of the Family Code. Section 261.201 provides in part:

(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 . . . 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.

³A copy of this letter may be found on the attorney general's website, <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

Fam. Code § 261.201(a), (k); *see id.* §§ 101.003 (defining “child” for purposes of Family Code title 5), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). You explain Exhibit 3 relates to a pending investigation conducted by the Texas Department of Family Protective Services (“DFPS”) under chapter 261 of the Family Code. Although the district is not an agency authorized to conduct an investigation under chapter 261, section 261.406 of the Family Code authorizes DFPS and law enforcement agencies to conduct investigations involving public schools under chapter 261. *See id.* §§ 261.103 (listing agencies that may conduct investigations under Fam. Code ch. 261), .406 (investigations in schools). Based on your representations and our review of the information at issue, we agree the information the information we have marked within Exhibit 3 is confidential under section 261.201(a) of the Family Code. We note section 261.201(k) permits the investigating agency to release information relating to an investigation under chapter 261 to a parent of the child who was the subject of the alleged or suspected abuse or neglect, unless the parent is alleged to have committed the abuse or neglect. *See id.* § 261.201(k). However, although the requestor is the parent of the child concerned, section 261.201(k) is not applicable because the district is not the agency that conducted the investigation. We therefore conclude the district must withhold the information we have marked under section under section 552.101 of the Government Code in conjunction with section 261.201(a).⁴ However, we find you have failed to demonstrate the remaining information at issue consists of a report of alleged or suspected child abuse or neglect or the identity of the person making the report. Further, we find no portion of the remaining information at issue consists of information used or developed in an investigation of child abuse or neglect under chapter 261 of the Family Code. Therefore, the district may not withhold the remaining information under section 552.101 in conjunction with section 261.201.

Section 552.135 of the Government Code provides the following:

- (a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov’t Code § 552.135. Because the legislature limited the protection of section 552.135 of the Government Code to the identity of a person who reports a possible violation of “law,” a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, individuals who provide information in

⁴As our ruling is dispositive, we need not consider your argument under section 552.135 for this information.

the course of the investigation, but do not report a violation of law are not informants for purposes of section 552.135. Upon review, we find you have not demonstrated the remaining information identifies an informer for the purposes of section 552.135. Therefore, we find the district may not withhold the remaining information under section 552.135.

In summary, this ruling does not address the applicability of FERPA to the submitted education records. 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. As no other exceptions to disclosure have been raised, 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, 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/bhf

Ref: ID# 603312

Enc. Submitted documents

c: Requestor
(w/o enclosures)