



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 7, 1997

Mr. Mark Littleton
Executive Director
State Board for Educator Certification
1001 Trinity
Austin, Texas 78701

OR97-0479

Dear Mr. Littleton:

You have asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104207.

The State Board for Educator Certification (the "board") received a request for certain police reports held by the board, which concern an educator. You assert that because the police reports contain the names of students and their parents, the reports are excepted from disclosure under federal law or on the basis of privacy. You also assert that section 552.108 is applicable to the records at issue.

Section 552.026 of the Government Code incorporates into the Open Records Act the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. FERPA governs the availability of education records held by educational agencies or institutions that receive federal funds under programs administered by the federal government. One of the documents at issue is from the City of Austin Police Department. This document is not an education record subject to FERPA.

Other reports are from the Austin Independent School District Police Department. The definition of "education records" under FERPA does not include "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." 20 U.S.C. § 1232g)a)(4)(B)(ii); *see* Open Records Decision No. 612 (1992). Thus, the records from the Austin Independent School District Police Department are not FERPA records.¹

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime"

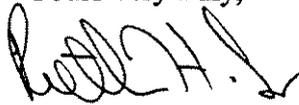
¹Neither is Section 552.114 of the Government Code applicable to these records, as education records for purposes of section 552.114 do not include the records of an educational institution's law enforcement unit. *See* Open Records Decision No. 612 (1992).

and “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.” Gov’t Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). The board is not a law enforcement agency or prosecutor within the meaning of section 552.108.

However, the documents at issue are protected from disclosure pursuant to section 261.201 of the Family Code. Section 261.201 provides that, except as otherwise provided in that section or for purposes consistent with the Family Code and applicable federal or state law or under rules adopted by an investigating agency, the files, reports, records, communications, and working papers used or developed in an investigation under Family Code chapter 261 are confidential. Fam. Code § 261.201(a)(2). The documents at issue consist of records used or developed in an investigation made under chapter 261 of the Family Code and are confidential pursuant to that statute. *See* Open Records Decision No. 440 (1986) at 2 (construing predecessor provision).²

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 104207

Enclosures: Submitted documents

cc: Mr. Shelton Green
Reporter
KVUE-TV, Inc.
3201 Steck Avenue
Austin, Texas 78757
(w/o enclosures)

²Because the information at issue is confidential and may not be disclosed, we need not address your argument concerning the privacy rights of the individuals named in the documents at issue.