



Office of the Attorney General  
State of Texas

January 15, 1998

DAN MORALES  
ATTORNEY GENERAL

Mr. Robert Russo  
Walsh, Anderson, Underwood, Schulze & Aldridge  
P.O. Box 2156  
Austin, Texas 78768

OR98-0146

Dear Mr. Russo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111586.

The Floresville Independent School District (the "district") received a request for the investigation file of a named teacher. The request was made by a child protective services specialist with the Texas Department of Protective and Regulatory Services (the "department"). You ask whether you may withhold some of the requested information under sections 552.026, 552.101, 552.102, 552.103, 552.107 and 552.114 of the Government Code. You have submitted the documents at issue for our review. The requested information includes several categories of confidential information. The subject of the request also asks that much of the requested information be withheld.

Generally, information may be transferred between governmental agencies which are subject to the Open Records Act without destroying the confidential nature of the information. Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 567 (1990), 561 (1990), 516 (1989). These decisions are grounded in the well settled policy of the state that state agencies should cooperate with each other in the interest of the efficient and economical administration of their statutory duties. *See* Open Records Decision No. 516 (1989). These decisions also recognize that a release to a state agency is not a release to the public for purposes of Government Code section 552.007, which prohibits the selective disclosure of information, and Government Code section 552.352, which provides criminal penalties for the release of information considered to be confidential under the act. *See id.* For example, information that is excepted from public disclosure under the Open Records Act may be transferred between state agencies without destroying its confidential character if the agency to which the information is transferred has the authority to obtain it. *See* Open Records Decision Nos. 516 (1989) (Department of Public Safety transfer to Texas Attorney General's Child Support Enforcement Office authorized by statute), 490 (1988). The principle that information may be transferred without destroying its confidential character, however, does not apply where a statute makes the information confidential and

allows the transfer of the information to only certain enumerated entities. *See* Attorney General Opinion JM-590 (1986); Open Records Decision Nos. 655 (1997), 650 (1996). We believe in this case that the department has the authority to receive most of the requested information.

The department is required to investigate reports of alleged or suspected abuse or neglect allegedly committed by a person responsible for the child's care. Fam. Code § 261.301. Sections 261.301(d) and (e) of the Family Code provide that

(d) The department may by rule assign priorities and prescribe investigative procedures for investigations based on the severity and immediacy of the alleged harm to the child. The primary purpose of the investigation shall be the protection of the child.

(e) As necessary to provide for the protection of the child, the department or designated agency shall determine:

- (1) the nature, extent, and cause of the abuse or neglect;
- (2) the identity of the person responsible for the abuse or neglect;
- (3) the names and conditions of the other children in the home;
- (4) an evaluation of the parents or persons responsible for the care of the child;
- (5) the adequacy of the home environment;
- (6) the relationship of the child to the persons responsible for the care, custody, or welfare of the child; and
- (7) all other pertinent data.

Fam. Code § 261.301(d)-(e). Further, section 261.302 provides the following:

(a) The investigation may include:

- (1) a visit to the child's home, unless the alleged abuse or neglect can be confirmed or clearly ruled out without a home visit; and
- (2) an interview with and examination of the subject child, which may include a medical, psychological, or psychiatric examination.

(b) The interview with and examination of the child may:

(1) be conducted at any reasonable time and place, including the child's home or the child's school;

(2) include the presence of persons the department or designated agency determines are necessary; and

(3) include transporting the child for purposes relating to the interview or investigation.

(c) The investigation may include an interview with the child's parents and an interview with and medical, psychological, or psychiatric examination of any child in the home.

It appears in this instance that the department is conducting a statutorily required investigation of a report of alleged child abuse or neglect. Given the department's statutory authority to investigate reports of suspected child abuse or neglect, we believe that the district must release most of the requested information to the department. Open Records Decision No. 516 (1989). We point out, nonetheless, that the information transferred by the district will be confidential in the hands of the department. Section 261.201 of the Family Code provides:

(a) The 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.

Thus, the information transferred by the district to the department may not be released except as provided by statute. Fam. Code § 261.201(b) - (f).

We recognize your argument that some of the requested information is excepted from disclosure because it is an education record made confidential by the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, or sections 552.026 and 552.114 of the Government Code. In Open Records Decision No. 634 (1995), this office concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public

disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

In this instance, however, you have submitted to this office de-identified information. "Education records" are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978).<sup>1</sup> You have redacted the personally identifying information which generally must be withheld. Since the records that you have submitted are de-identified and do not personally identify any particular student, the material no longer contains information which is confidential under FERPA. Moreover, you explain that the parents of the student who is involved in the department's investigation have authorized disclosure of their child's statements to the department. *See* Gov't Code §552.229. We do not believe that the submitted information may be withheld as student records.

Additionally, we note that some of the submitted documents are confidential medical records. The Medical Practice Act (the "MPA"), article 4495b of Vernon's Texas Civil Statutes, protects from disclosure "[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician." V.T.C.S. art. 4495b, § 5.08(b). The documents submitted to this office include medical records access to which is governed by provisions outside the Open Records Act. Open Records Decision No. 598 (1991). The MPA provides for both confidentiality of medical records and certain statutory access requirements. *Id.* at 2. The medical records submitted to this office for review may only be released as provided by the MPA. *See* V.T.C.S. art. 4495b, § 5.08(c).

Finally, you may have confidential criminal history report information ("CHRI") within the submitted information. Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R.

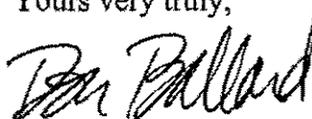
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<sup>1</sup>*But see* 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to that student's education records). *See also* Open Records Decision No. 431 (1985) (Open Records Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student).

§' 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Section 411.083 provides that any CHRI maintained by the Department of Public Safety ("DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute is also confidential and may only be disclosed in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Both the district and the department are authorized to receive CHRI from law enforcement agencies. See Gov't Code §§ 411.097, .114. However, the district itself is restricted from releasing the CHRI it obtains except in extremely limited circumstances. Gov't Code §411.097(c). The district is not specifically authorized by the statute to release CHRI to the department nor is the department specifically authorized to receive CHRI from the district. Therefore, assuming that you have CHRI in your possession and it falls within the ambit of the state and federal regulations above, you must withhold the CHRI from the department.

In summary, you must transfer the submitted information to the department for its statutorily required investigation except for the specific types of information discussed above, medical records and CHRI. We are resolving this matter with an 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 should 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,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB/ch

Ref: ID# 111586

Enclosures: Submitted documents

cc: Ms. Lisa Cantu  
Child Protective Services Specialist  
Texas Department of Protective and Regulatory Services  
661 Tenth Street  
Floresville, Texas 78114  
(w/o enclosures)