



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 27, 2006

Ms. Laura C. Rodriguez
Walsh, Anderson, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2006-08131

Dear Ms. Rodriguez:

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# 255259.

The Northside Independent School District (the "district") received a request for information regarding allegations made against the requestor by two named district employees. You state that the district will release some of the requested information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. Section 261.201(a) of the Family Code provides as follows:

(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.

Fam. Code § 261.201(a). We note that the district is not an agency authorized to conduct a chapter 261 investigation. *See* Fam. Code § 261.103 (listing agencies that may conduct child abuse investigations). Furthermore, you do not state that the submitted documents were forwarded to an appropriate agency that is conducting an investigation under chapter 261. *See* Gov't Code § 552.301(e)(1) (requiring the governmental body to explain the applicability of the raised exception). Therefore, you have failed to demonstrate that chapter 261 is applicable to the submitted information. Accordingly, the district may not withhold any of this information under section 552.101 in conjunction with section 261.201.

You also assert that the submitted information contains the identifying information of an individual that is confidential under section 261.101 of the Family Code. Section 261.101 provides as follows:

(a) A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.

...

(d) Unless waived in writing by the person making the report, the identity of an individual making a report under this chapter is confidential and may be disclosed only:

(1) as provided by Section 261.201; or

(2) to a law enforcement officer for the purposes of conducting a criminal investigation of the report.

In addition, section 261.103(a) provides as follows:

(a) Except as provided by Subsection (b) and Section 261.405, a report shall be made to:

(1) any local or state law enforcement agency;

(2) the department if the alleged or suspected abuse involves a person responsible for the care, custody, or welfare of the child;

- (3) the state agency that operates, licenses, certifies, or registers the facility in which the alleged abuse or neglect occurred; or
- (4) the agency designated by the court to be responsible for the protection of children.

You state that the submitted information contains the identifying information of an individual who contacted law enforcement authorities to determine whether certain conduct could be considered assault. You state that "it is unclear to what extent [the individual at issue] described the alleged conduct and whether he informed law enforcement that such conduct involved children." Upon review of your arguments and the information at issue, we find that you have failed to demonstrate that the individual whose identity you seek to protect made a report of alleged abuse or neglect under section 261.101 of the Family Code. Accordingly, the district may not withhold any of the submitted information under section 552.101 in conjunction with section 261.101.

Section 552.101 of the Government Code also encompasses the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g(b)(1). FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 of the Government Code excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. In Open Records Decision No. 634 (1995), this office concluded that (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 of the Government Code 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 of the Government Code 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, you ask this office to determine if FERPA applies to the submitted documents. Therefore, we will consider whether any information in these documents is protected by FERPA.

Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978). This includes information that directly identifies a student or parent, as well as information that, if released, would allow the student’s identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student’s handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). Upon review, we conclude that the district must withhold the information we have marked under section 552.114 and FERPA.

In summary, the district must withhold the information we have marked under FERPA and section 552.114 of the Government Code. The remaining submitted information must be released.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 255259

Enc. Submitted documents

c: Mr. Jose Mireles
8907 Brightwater
San Antonio, Texas 78254
(w/o enclosures)