



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 7, 2010

Mr. John A. Kazen  
Kazen, Meurer & Perez L.L.P.  
P.O. Box 6237  
Laredo, Texas 78042

OR2010-06587

Dear Mr. Kazen:

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# 378594.

The Laredo Independent School District (the "district"), which you represent, received a request for the requestor's client's personnel file, for ten categories of information related to the investigation of incidents involving the requestor's client, and for information regarding similar incidents involving any district employee. You state the district has released some of the requested records. 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.

Initially, we note student names have been redacted from the records submitted in Exhibit B. We understand you have redacted this information pursuant to the Family Educational Rights and Privacy Act ("FERPA"). Recently, the United States Department of Education Family Policy Compliance Office informed this office that FERPA, 20 U.S.C. § 1232g, 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.<sup>1</sup> However, FERPA is not applicable to law enforcement records maintained by the district police

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<sup>1</sup>We have posted a copy of the letter on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

department that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. You state Exhibit B consists of law enforcement records prepared by the district's police department. Thus, this information is not subject to FERPA and no portion of the information in Exhibit B may be withheld on that basis.

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 protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant 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.

Fam. Code § 261.201(a). Upon review, we find Exhibits A and B are records of the district's police department that relate to that department's investigation of alleged or suspected child abuse for purposes of section 261.201. *See id.* § 261.001(1)(E) (definition of "abuse" for purposes of Family Code chapter 261 includes indecency with a child under Penal Code section 21.11). We therefore conclude Exhibits A and B are subject to section 261.201. You do not indicate that the district's police department has adopted a rule that governs the release of this type of information. We therefore assume no such rule exists. Given that assumption, we conclude Exhibits A and B are confidential under section 261.201 of the Family Code, and must be withheld under section 552.101 of the Government Code.<sup>2</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Although you claim the e-mail submitted as Exhibit C is made confidential by section 261.201, you state this e-mail is a communication between district administrators. We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). You do not explain, and we are unable to discern, whether this e-mail is a record of the district's police department, or of any other agency authorized to conduct an investigation under chapter 261.

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

Accordingly, we conclude you failed to explain how the e-mail in Exhibit C is confidential under section 261.201 of the Family Code, and it may not be withheld under section 552.101 on that basis. As you raise no other exceptions to disclosure of this information, Exhibit C must be released in its entirety.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Bob Davis  
Assistant Attorney General  
Open Records Division

RSD/eeg

Ref: ID# 378594

Enc. Submitted documents

cc: Requestor  
(w/o enclosures)