



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2010

Mr. John A. Kazen
Kazen, Meurer & Perez L.L.P
For Laredo Independent School District
P.O. Box 6237
Laredo, Texas 78042-6237

OR2010-16892

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# 399674.

The Laredo Independent School District (the "district"), which you represent, received a request for all documents related to district employees who have been placed on administrative leave as of a certain date. You state that some of the documents responsive to the request have been released. 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, you state the district has redacted student-identifying information in the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. FERPA provides that an educational agency or institution may not release 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). We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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.¹ However, FERPA is not applicable to law enforcement records maintained by the district's police 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. The district has redacted student identifying information in Exhibits A, B, C, and D. Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to Exhibit C. However, Exhibits A, B, and D are law enforcement records prepared by the district's police department for a law enforcement purpose. Thus, Exhibits A, B, and D are not subject to FERPA, and no portion of them may be withheld on that basis.

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

(a) Except as provided by Section 261.203, 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.

(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, B, and D are records of the district's police department that relate to the department's investigation of alleged or suspected child abuse and are subject to 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). You do not indicate the district's police department has adopted a rule governing the release of this type of information. We therefore assume no such rule exists. Given that assumption, we conclude Exhibits A, B, and D are confidential under

¹A copy of the DOE's letter to this office is posted on the Attorney General's website at: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>

section 261.201 of the Family Code, and must be withheld under section 552.101 of the Government Code.² See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Additionally, you claim the report submitted as Exhibit C also is confidential under section 261.201. You state this report was "prepared by a school district administrator[.]" 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 cannot discern, whether this information is a record of the district's police department or another agency authorized to conduct an investigation under chapter 261. Accordingly, we conclude you failed to explain how Exhibit C is confidential under section 261.201 of the Family Code, and the district may not withhold it under section 552.101 on that basis. However, section 552.101 also encompasses section 261.101 of the Family Code, which provides that the identity of an individual making a report under chapter 261 is confidential. See *id.* § 261.101(d). Exhibit C contains information that identifies the person making the report in this case. Accordingly, the information we have marked is confidential under section 261.101(d) and must be withheld under section 552.101 of the Government Code.

Section 552.101 encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered highly intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Generally, information that identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. See Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked information in Exhibit C that must be withheld under section 552.101 in conjunction with common-law privacy.

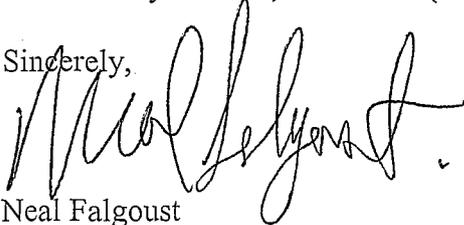
In summary, the district must withhold Exhibits A, B, and D under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must withhold the information we have marked in Exhibit C under section 552.101 in conjunction with section 261.101(d) of the Family Code and common-law privacy. 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.

²As this ruling is dispositive for this information, we do not address your remaining arguments against disclosure

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, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/eb

Ref: ID# 399674

Enc. Submitted documents

c: Requestor
(w/o enclosures)