



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 24, 2011

Mr. Ricardo R. Lopez  
Rogers, Morris & Grover, L.L.P.  
For North East Independent School District  
517 Soledad Street  
San Antonio, Texas 78205-1508

OR2011-01104

Dear Mr. Lopez:

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# 407355.

The North East Independent School District (the "district"), which you represent, received a request for records pertaining to a specified incident. You state student-identifying information has been redacted from the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information is subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed

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<sup>1</sup>We note that 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. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. A 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>.

report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation which was made by the district. Accordingly, the submitted information must be released under section 552.022(a)(1) of the Government Code unless it is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. We note you do not raise section 552.108 of the Government Code. Furthermore, section 552.103 of the Government Code is a discretionary exception that protects a governmental body's interest and may be waived. *See Dallas Area Rapid Transit*, 4 S.W.3d 469, 475-76; Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential); Open Records Decision No. 542 at 4 (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (discretionary exceptions generally). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the district may not withhold any of the submitted information under section 552.103 of the Government Code. However, we note some of the submitted information may be subject to section 552.101 of the Government Code, which is "other law" for purposes of section 552.022.<sup>2</sup> Therefore, we will consider the applicability of this exception to 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." 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.

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<sup>2</sup>The office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Fam. Code § 261.201(a). Upon review, we find some of the submitted information, which we have marked, was used or developed in an investigation of child abuse and identifies the person making the report of abuse; therefore, this information is within the scope of section 261.201 of the Family Code. *See id.* §§ 261.001(1) (defining “abuse” for purposes of Family Code chapter 261), 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). The information we have marked is confidential pursuant to section 261.201 of the Family Code. Accordingly, the district must withhold the information we have marked from disclosure under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As you raise no further exceptions to disclosure, the district must release the remaining information to the requestor.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/vb

Ref: ID# 407355

Enc. Submitted documents

c: Requestor  
(w/o enclosures)