



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2011

Ms. Claire E. Swann
Abernathy, Roeder, Boyd & Joplin, P.C.
For Mansfield Independent School District
P.O. Box 1210
McKinney, Texas 75070-1210

OR2011-01689

Dear Ms. Swann:

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# 408167.

The Mansfield Independent School District (the "district"), which you represent, received a request for the behavior and discipline records of a named student. You state that some of the information will be released to the requestor. 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 the district has redacted student-identifying information in the submitted offense report pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. However, FERPA is not applicable to law enforcement records maintained by the district's police department (the "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 submitted law enforcement records relate to an investigation by the department and are maintained by the department. Thus, this information is not subject to FERPA, and no portion of it 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. Section 552.101 encompasses section 58.007 of the Family Code, which

makes confidential juvenile law enforcement records relating to conduct by a child that occurred on or after September 1, 1997.¹ Fam. Code § 58.007(c). The relevant portion of section 58.007 provides:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child's parent or guardian.

...

(j) Before a child or a child's parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

(1) any personally identifiable information about a juvenile suspect, offender, victim, or witness who is not the child; and

(2) any information that is excepted from required disclosure under Chapter 552, Government Code, or other law.

¹The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

Id. § 58.007(c), (e), (j). The information submitted as Exhibit C involves delinquent conduct by a child or conduct indicating a need for supervision that occurred after September 1, 1997; therefore, the submitted information is subject to section 58.007. In this instance, however, the requestor is the child's parent. Therefore, section 58.007(e) allows the requestor access to the child's law enforcement records. *Id.* § 58.007(e). However, before the requestor is permitted to inspect or receive a copy of the information, the district must redact information subject to any other exceptions under the Act or other law. *Id.* § 58.007(j).

Section 552.101 of the Government Code also 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.

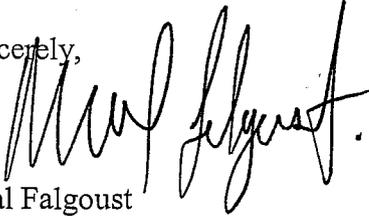
Fam. Code § 261.201(a). Upon review, we find the information submitted as Exhibit C was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1)(e) (defining "abuse" for purposes of Family Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes 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). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, the submitted incident report pertains to an investigation of alleged or suspected abuse conducted by the department. Thus, we find the information submitted as Exhibit C is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule governing the release of this type of information; therefore, we assume no such rule exists. Given that assumption, we conclude the information submitted as Exhibit C is confidential pursuant to section 261.201(a) of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Accordingly, the district must withhold the information submitted as Exhibit C in its entirety

under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

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, 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/dls

Ref: ID# 408167

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we do not address your arguments against disclosure.