



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 10, 2011

Mr. Joseph E. Hoffer
Rogers, Morris & Gover, L.L.P.
For the San Felipe Del Rio Consolidated Independent School District
517 Soledad Street
San Antonio, Texas 78205-1508

OR2011-02097

Dear Mr. Hoffer:

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# 408820.

The San Felipe Del Rio Consolidated Independent School District (the "district"), which you represent, received a request for any documents relied upon by the Level One and Level Two hearing administrator in a specific matter; any information received by the district related to a specified incident; and the statements obtained by the district's police department from students or other school employees regarding the same incident.¹ We understand the district has released or 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 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹The district sought and received clarification of the information requested. *See* Gov't Code § 552.222 (if request for information is unclear, governmental body may ask requestor to clarify request)

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, we note that in his response to the district's request for clarification, the requestor states that his letter to the district was not a request for public information. Section 552.002 of the Government Code provides that "public information" consists of

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov't Code § 552.002(a). Thus, virtually all information that is in a governmental body's physical possession constitutes public information that is subject to the Act. *Id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). The submitted information consists of witness statements and related diagrams created by the district's police department (the "department") in the course of investigating the incident specified in the request. This information is in the possession of the district, which is a governmental body as defined by section 552.003, and was collected, assembled, or maintained in connection with the transaction of the district's official business. Therefore, we conclude the submitted information is subject to the Act. We note that a written communication that reasonably can be judged to be a request for public information is a request for information under the Act. Open Records Decision No. 44 at 2 (1974). A governmental body has a duty to make a good faith effort to relate a request for information to information that the governmental body holds. *See* Open Records Decision No. 561 (1990). In this case, the district sought clarification from the requestor and submitted responsive information for our review. We consider the district to have made a good faith effort to identify the information that is responsive to the request. Accordingly, we will consider the district's arguments against disclosure of the submitted information.

Next, we note the district has redacted student-identifying information in the submitted statements and diagrams, which were collected by the department, 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 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 statements and related diagrams consists of law enforcement records prepared by the department. Thus, this information is not subject to FERPA, and no portion of this information 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 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 submitted statements and diagrams were used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (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 information pertains to an investigation of alleged or suspected abuse conducted by the department. Thus, we find the submitted information falls 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 submitted information 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 submitted information in its entirety under section 552.101 of the Government Code.³

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.

³As our ruling is dispositive, we need not address your 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,



Kate Hartfield
Assistant Attorney General
Open Records Division

KH/em

Ref: ID# 408820

Enc. Submitted documents

c: Requestor
(w/o enclosures)