



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 7, 2011

Mr. Adam D. Courtin
Rogers, Morris & Grover, L.L.P.
For New Caney Independent School District
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2011-03164

Dear Mr. Courtin: ATTORNEY GENERAL OF TEXAS

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# 410662.

The New Caney Independent School District (the "district"), which you represent, received two requests for information related to the requestor's termination. You state you have released some of the requested information to the requestor. You claim that 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.

You inform us the district has redacted some of the student-identifying information in the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's 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 See 20 U.S.C. § 1232g(d). However, FERPA is generally not applicable to law enforcement records maintained for a law enforcement purpose. See *id.* § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Exhibits B and D contain law enforcement records maintained by the district's police department for a law enforcement purpose.

¹A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Accordingly, because the law enforcement records submitted in Exhibits B and D are maintained by the district's police department, this information does not constitute education records subject to FERPA and no portion of it may be withheld on that basis. Because we can discern the nature of the information that has been redacted, being deprived of this information does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative but to order the redacted information be released. *See* Gov't Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of "specific information requested" or representative sample), .302. Because our office is prohibited from reviewing the submitted education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to the remaining information. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records.² However, we will consider your arguments against disclosure of the submitted information.

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 information made confidential by other statutes, including section 261.201 of the Family Code, which provides in relevant part the following:

(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 the information in Exhibits B and D was used in an 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 note the district is not

²In the future, if the district does obtain parental or an adult student's consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, Exhibits B and D reflect the investigation was conducted by the district's police department, which is so authorized. We therefore conclude Exhibits B and D 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 B and D are confidential under section 261.201 of the Family Code, and must be withheld under section 552.101 of the Government Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Although you claim Exhibit C is made confidential by section 261.201, we note Exhibit C consists of administrative documents created by district employees. You do not explain, and we are unable to discern, that the information in Exhibit C constitutes a report of alleged or suspected child abuse or neglect under chapter 261 or that this information was used or developed in an investigation under chapter 261. Thus, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with 261.201 of the Family Code. 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, 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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/dls

³As our ruling is dispositive, we need not address your remaining argument against disclosure of Exhibits B and D.

Ref: ID# 410662

Enc. Submitted documents

c: Requestor
(w/o enclosures)