



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 7, 2011

Mr. Humberto Aguilera
For San Antonio Independent School District
Escamilla, Poneck & Cruz, L.L.P.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2011-09653

Dear Mr. Aguilera:

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# 423234.

The San Antonio Independent School District (the "district"), which you represent, received a request for (1) a copy of a specified investigation, (2) all documents indicating compliance by the district with Texas Education Code § 25.114 in regards to physical education classes at a specified elementary school during a specified time period, (3) all writings setting out how the district specifically identifies the manner in which the safety of students will and is being maintained in every physical elementary class at a specified elementary school in which the student to teacher ratio is greater than 45 to 1 during a specified time period, and (4) the contents of a named teacher's campus and district files.¹ You state some responsive information will be made available to the requestor. You also state some of the submitted information has been redacted pursuant to the Family Educational Rights and Privacy Act

¹You state the district sought and received clarification of the instant request from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date the request is clarified or narrowed).

("FERPA"), section 1232g of title 20 of the United States Code.² You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments from the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

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

(a) [T]he 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; 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). You assert a portion of the submitted information relates to an investigation by the district's administration into the alleged abuse or neglect of a child. You contend the information at issue is confidential because it was used or developed in an investigation under chapter 261 of the Family Code. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). 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). However, you contend the information at issue "could show the identity of the [d]istrict employee who made a report to CPS." Upon review, we find portions of the information at issue reveal the identity of an individual who made a report of alleged or suspected abuse or

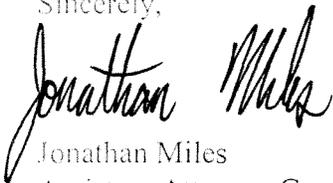
²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education 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. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

neglect to CPS. Accordingly, the district must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. The remaining information at issue consists of documentation collected or generated by the district for its administrative investigation. You do not explain, and we cannot discern, whether the district's administrative investigation was used by CPS or another authorized agency in an investigation under chapter 261. *See id.* § 261.201(a)(2). Thus, we conclude you have failed to demonstrate how the remaining information at issue constitutes a report of alleged or suspected abuse or neglect made under chapter 261 or how the remaining information at issue was used or developed in an investigation under chapter 261. Consequently, the district may not withhold any of the remaining information under section 552.101 in conjunction with section 261.201. As you raise no further exceptions, 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.

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,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/em

Ref: ID# 423234

Enc. Submitted documents

c: Requestor
(w/o enclosures)