



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2011

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2011-14133

Dear Ms. McGowan:

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# 431961 (Dallas ISD ORR # 10430).

The Dallas Independent School District (the "district") received a request for the Legal Review Committee files, campus files, and evaluation history for a named district employee. You state the district will release some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the federal Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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.² Consequently, state and local

¹Although you raise section 552.108 of the Government Code, you make no arguments to support this exception. Accordingly, we find the district has waived its claim under this exception. *See* Gov't Code § 552.301(e) (governmental body must provide comments stating why exceptions raised should apply to information requested).

²A copy of this letter may be found on the attorney general's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable” information is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). The submitted information includes unredacted education records. Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address the applicability of FERPA to any of the submitted information. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education record.³ We will, however, address the applicability of the claimed exceptions 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. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides in part:

(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 claim the submitted information is confidential under section 261.201. 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, you state the district has on staff an employee who is shared with the Texas Department of Family and Protective Services (“DFPS”) to receive and investigate child abuse claims. Furthermore, you state the information at issue was obtained by the Dallas Police Department, DFPS, or district police officers, who are commissioned peace officers with the authority to investigate child abuse claims, to investigate such claims. Thus, based on your representations and our review, we find the submitted information was used or developed by these investigating agencies in a child abuse investigation. *See id.* §§ 261.001(1) (defining “abuse” for purposes of Family Code chapter 261), 101.003(a)

³In the future, if the district does obtain consent to submit unredacted education records and seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

(defining “child” for purposes of section 261.201 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”). Therefore, we find the submitted information is within the scope of section 261.201 of the Family Code. You have not indicated any of the investigating entities have adopted rules that govern the release of this type of information; therefore, we assume no such regulations exist. Given that assumption, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 431961

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure.