



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2011

Mr. Robert N. Bland, IV
Ector County District Attorney
300 North Grant, Room 305
Odessa, Texas 79761

OR2011-14825

Dear Mr. Bland:

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# 432710.

The Ector County District Attorney (the "district attorney") received a request for all documents gathered in preparation for the prosecution of a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you inform us the submitted information contains student records. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("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.¹ Consequently, state and local 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"). We note the district attorney,

¹We have posted a copy of the DOE's letter on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

which maintains the information at issue, is not an educational institution. *See* Open Records Decision No. 390 at 3 (1983) (City of Fort Worth is not an “educational agency” within FERPA). However, the submitted information reveals the student records at issue were transferred to the district attorney from the Ector County Independent School District (the “district”). FERPA permits an educational agency or institution to release education records to a third party under certain enumerated circumstances. 20 U.S.C. § 1232g(b). The federal regulations provide that a third party that receives such information from an educational agency may use the information only for the purposes for which the disclosure was made. *Id.* § 1232g(b)(4)(B); 34 C.F.R. § 99.33(a). Because the information at issue are student records received as a result of a transfer made pursuant to FERPA, we will not address the applicability of FERPA to the student records as our office is prohibited from reviewing education records to determine whether appropriate redactions have been made under FERPA. We will, however, address the applicability of the claimed exceptions to 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 protected by other statutes, including section 261.201 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 [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). You state the submitted information was used in a child abuse investigation. Based on your assertions and our review of the information at issue, we find the submitted information falls within the scope of section 261.201(a). *See id.* § 261.001(1)(E) (definition of child abuse includes sexual assault and aggravated sexual assault under Penal Code sections 22.011 and 22.021); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as person under 17 years of age). As you do not indicate the district attorney has adopted a rule that governs the release of this type of information, we assume that no such regulation exists. Given that assumption, we conclude the submitted information is confidential and must be withheld in

its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) 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,



Kirsten Brew
Assistant Attorney General
Open Records Division

KB/em

Ref: ID# 432710

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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