



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2011

Ms. Leila Feldman
General Counsel
Fort Bend Independent School District
16431 Lexington Boulevard
Sugar Land, Texas 77479

OR2011-18760

Dear Ms. Feldman:

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# 439517 (FBISD # 2011-12-108).

The Fort Bend Independent School District (the "district") received a request for the entire investigative file pertaining to a specified incident, including specified police reports. You claim that the requested 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, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g ("FERPA") 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"). In this instance, you have submitted,

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>.

in part, redacted records and handwritten student statements, for our review. *See* Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we generally will not address the applicability of FERPA to any of the submitted documents. Such determinations under FERPA must be made by the educational authority in possession of the education records.² We note, however, that FERPA is generally not applicable to law enforcement records maintained by the district’s police department (the “department”) for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Upon review, we find portions of the submitted information constitute law enforcement records created and maintained by the department for law enforcement purposes. Thus, these records are not subject to FERPA, and no portion of these records 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); *see also id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We note the district is not an agency authorized to conduct an investigation under chapter 261. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, you state that the CDs and documents in Exhibit B pertain to an investigation of alleged or suspected child abuse by the department, which is an agency authorized to conduct investigations under chapter 261. Accordingly, you seek

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.

to withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. Upon review, we find Exhibit B is within the scope of section 261.201 of the Government Code. You do not indicate that the department has adopted a rule that governs the release of this type of information. Therefore, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³

You also seek to withhold Exhibit C under section 552.101 in conjunction with section 261.201. This information consists of students' handwritten statements, a teacher's handwritten and typed statements, and a letter to human resources from a principal. You do not explain, and we are unable to discern, that this information 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. Accordingly, we conclude the district may not withhold Exhibit C under section 552.101 in conjunction with section 261.201(a) of the Family Code.

In summary, the district must withhold Exhibit B under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The district must release Exhibit C.

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,



Tamara H. Holland
Assistant Attorney General
Open Records Division

THH/ag

³As our ruling as to this information is dispositive, we need not address your remaining arguments against its disclosure.

Ref: ID# 439517

Enc. Submitted documents

c: Requestor
(w/o enclosures)