



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2012

Mr. Tony Resendez
Counsel for the Judson ISD
Walsh, Anderson, Gallegos, Green and Trevino, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2012-13006

Dear Mr. Resendez:

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# 462235.

The Judson Independent School District (the "district"), which you represent, received a request for thirteen categories of information concerning a named employee of the district. You state some of the requested information either has been or will be released. You claim other responsive information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We note the submitted information includes education records. The United States Department of Education Family Policy Compliance Office has informed this office the 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.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

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

information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You state the district has redacted personally identifiable student information from the submitted documents. Because our office is prohibited from reviewing an education record for the purpose of determining whether appropriate redactions have been made under FERPA, we will not address the applicability of FERPA to the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education records.² We will consider the district’s exceptions to disclosure under the Act.

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. This exception encompasses information other statutes make confidential. 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 [the Act], and may be disclosed only for purposes consistent with th[e Family 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see id.* §§ 101.003 (defining “child” for purposes of Fam. Code title 5), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We understand you to contend the documents submitted as Exhibits AG-0001 and AG-0002 contain a report of alleged or suspected child abuse or neglect made under chapter 261 of the Family Code and may contain the identity of the person who made the report. *See id.* § 261.201(a)(1). You also state the documents in question could contain communications used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261. *See id.* § 261.201(a)(2). We note the information at issue is related to a personnel matter. Having considered your arguments and reviewed the information, we find it does not contain either a report of alleged or suspected child abuse or neglect made under chapter 261 or the identity of a person who made such a report. We

²If in the future the district obtains parental consent to submit unredacted education records and seeks a ruling from this office on the proper redaction of those records in compliance with FERPA, we will rule accordingly.

therefore conclude the district may not withhold any of the information in Exhibits AG-0001 and AG-0002 under section 552.101 of the Government Code on the basis of section 261.201(a)(1) of the Family Code. With regard to your claim under section 261.201(a)(2), we note the district is not an agency authorized to conduct an investigation under chapter 261. *See id.* §§ 261.103, .301. You have not demonstrated Exhibits AG-0001 and AG-0002 were used by an agency authorized to conduct an investigation under chapter 261 in such an investigation. *See id.* § 261.406 (investigations in schools). We therefore conclude the district may not withhold any of the information in Exhibits AG-0001 and AG-0002 under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. We note, however, Exhibits AG-0003 and AG-0004 consist of an incident report generated by the district's police department (the "department"), which is authorized to conduct an investigation under chapter 261. We find the department's report was used or developed in an investigation of alleged or suspected child abuse under chapter 261, so as to be confidential under section 261.201(a)(2). As you do not indicate the department has adopted a rule that governs the release of this type of information, we assume no such rule exists. Given that assumption, we conclude the district must withhold Exhibits AG-0003 and AG-0004 under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both elements of the test must be established. *Id.* at 681-82. This office has found common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See Open Records Decision No. 394* (1983); *cf.* Fam. Code § 261.201. Exhibits AG-0001 and AG-0002 identify a victim of alleged or suspected child abuse. The district must withhold the victim's identity under section 552.101 of the Government Code in conjunction with common-law privacy.

We note the district may be required to withhold some of the remaining information at issue under section 552.117 of the Government Code.⁴ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former official or employee

³As we are able to make this determination, we need not address your other claims for the information in Exhibit AG-0003.

⁴This office will raise section 552.117 on behalf of a governmental body, as this section is a mandatory exception to disclosure. *See Gov't Code* §§ 552.007, .352; *Open Records Decision No. 674* at 3 n.4 (2001) (mandatory exceptions).

of a governmental body who timely requests confidentiality for the information under section 552.024 of the Government Code. *See* Gov't Code §§ 552.117(a)(1), .024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who did not timely request confidentiality under section 552.024. The district must withhold the information we have marked in Exhibits AG-0001 and AG-0002 under section 552.117(a)(1) of the Government Code if the employee concerned timely requested confidentiality for the information under section 552.024 of the Government Code.

In summary, the district must withhold (1) Exhibits AG-0003 and AG-0004 under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code; (2) the victim's identity in Exhibits AG-0001 and AG-0002 under section 552.101 in conjunction with common-law privacy; and (3) the information we have marked in Exhibits AG-0001 and AG-0002 under section 552.117(a)(1) of the Government Code if the employee concerned timely requested confidentiality for the marked information under section 552.024 of the Government Code. The rest of the submitted information must be released.⁵ This ruling does not address the applicability of FERPA to the submitted information. Should the district determine all or portions of the submitted information consist of "education records" that must be withheld under FERPA, the district must dispose of any such information in accordance with FERPA, rather than the Act.

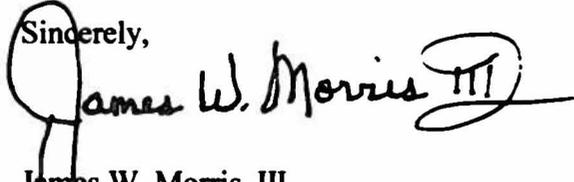
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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,

⁵We note the district might be required to withhold some of the remaining information from the general public under section 552.117(a)(1) to protect the privacy of the requestor's client. The requestor has a right of access, however, to his client's private information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Should the district receive another request for the submitted information from a different requestor, section 552.024(c) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) without the necessity of requesting a decision under the Act if the current or former employee to whom the information pertains timely elects not to allow public access to the information. *See* Gov't Code § 552.024(c)(2).

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, looped initial "J" and a distinct "III" at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 462235

Enc: Submitted documents

c: Requestor
(w/o enclosures)