



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 3, 2012

Ms. Heather De La Garza
Counsel for the McAllen ISD
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P.O. Box 3725
McAllen, Texas 78502-3725

OR2012-15763

Dear Ms. De La Garza:

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# 466766.

The McAllen Independent School District (the "district"), which you represent, received a request for information regarding De Leon Middle School, including employee training materials regarding child abuse or neglect, police reports that reference a named individual, any reports filed by another named individual with law enforcement authorities, and all communications related to a named individual's assignments. You state some of the requested information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.122, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's 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

¹A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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”). However, we note FERPA is not applicable to law enforcement records maintained by the district’s police department for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted information contains district police reports with FERPA redactions. These reports constitute law enforcement records created and maintained by the district for law enforcement purposes. Thus, these records are not subject to FERPA, and no portion of these records may be withheld on that basis. However, we will address the district’s arguments for the submitted information.

Next, we must address the district’s obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov’t Code § 552.301. Pursuant to section 552.301(b) of the Government Code, a governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving a request. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). The district received the request for information on June 15, 2012. You inform us the district was closed for business from June 28, 2012, to July 17, 2012. Thus, we find the district’s ten- and fifteen-business-day deadlines were July 19, 2012, and July 26, 2012, respectively. However, you did not request a ruling and submit the required documents to this office until July 27, 2012. *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). You inform us the district sought clarification of a portion of the request on July 23, 2012, and received a clarification from the requestor on July 24, 2012.² However, we note the district did not request clarification of the request until after the ten-business-day deadline had passed. As such, the statutory deadlines for requesting an opinion from this office and submitting the required documents were not reset and must be measured from the date the district received the request for information on June 15, 2012. *See generally City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (after requesting clarification within ten-business-day deadline, city timely submitted request for opinion within ten business days after receiving clarification). Consequently, we find the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

²*See* Gov’t Code § 552.222(b) (stating that if information requested is unclear to governmental body or if a large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. Gov't Code § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Sections 552.108 and 552.122 of the Government Code are discretionary exceptions to disclosure that protect a governmental body's interest and may be waived. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 177 (1977) (statutory predecessor to section 552.108 subject to waiver). Thus, in failing to comply with section 552.301, the district has waived its arguments under sections 552.108 and 522.122 and may not withhold any of the submitted information on those bases. However, because the district's claims under sections 552.101, 552.102, and 552.135 of the Government Code can provide compelling reasons for non-disclosure, we will consider your arguments under those exceptions.

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 section encompasses information protected by section 261.201 of the Family Code, which provides in relevant part:

[T]he 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). 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 assert some of the submitted information was used or developed in an investigation by the district's police department of alleged or suspected child abuse. *See id.* § 261.001(1)(A) (defining "abuse" for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining "child" for purposes of chapter 261). We note the district's police department is an agency authorized to conduct investigations under

chapter 261. Upon review, we agree the information you have marked is confidential under section 261.201 of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.³ The remaining submitted 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,



Kathryn R. Mattingly
Assistant Attorney General
Open Records Division

KRM/bhf

Ref: ID# 466766

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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