ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 19, 2012

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

OR2012-18604

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# 472164 (OR# 11508).

The Dallas Independent School District (the "district") received a request for information related to a named teacher in the district. You claim the requested information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note 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 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 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

[1]A 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.

instance, you have submitted unredacted education records for our review. Because our office is prohibited from reviewing such records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records.[2] We will consider your exceptions to disclosure of the submitted information 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 made confidential by other statutes, including section 261.201 of the Family Code, which provides in part:

> (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 [the 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; 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 [chapter 261 of the Family Code] 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(a). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). You state, however, 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. You also state the information at issue was obtained by the Dallas Police Department, DFPS, or district police officers who are commissioned peace officers authorized to investigate child abuse claims to investigate such claims. Based on your representations and our review, we find the Office of Professional Responsibility investigation at issue was used or developed by these investigating agencies in a child abuse investigation, so as to fall within the scope of section 261.201(a)(2). *See id.* §§ 101.003(a) (defining "child" for purposes of Fam. Code § 261.201), 261.001(1) (defining "abuse" for purposes of Family Code ch. 261).

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

As you do not indicate the investigating agencies have adopted rules that govern the release of this type of information, we assume no such rules exist. Given that assumption, we conclude the district must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.[3] This ruling does not address the applicability of FERPA to the submitted information. Should the district determine that all or portions of the submitted information consist of "education records" that must be withheld under FERPA, the district must dispose of that 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, 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,

James W. Morris III

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

JWM/bhf

Ref: ID# 472164

Enc: Submitted documents

c: Requestor
(w/o enclosures)

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[3]As we are able to make this determination, we need not address the other exception you claim.