



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 8, 2013

Mr. Orlando Juarez, Jr.
For the United Independent School District
Cruz & Associates, L.L.C.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2013-13760

Dear Mr. Juarez:

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# 495796.

The United Independent School District (the "district"), which you represent, received a request for all information regarding an incident involving the requestor's daughter, including the district police report, witness statements, and video. We understand you have redacted the home telephone numbers and addresses of two district employees under section 552.117(a)(1) of the Government Code as permitted by section 552.024(c) of the Government Code.¹ You claim the remaining information is excepted from disclosure under sections 552.108, 552.132, 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 student-identifying information in the submitted incident report and witness statements pursuant to the Family Educational Rights and Privacy

¹Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body. *See* Gov't Code § 552.117(a)(1). Section 552.024 of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee or official chooses not to allow public access to the information. *See id.* § 552.024(c).

Act ("FERPA"), section 1232g of title 20 of the United States Code.² However, in this instance, the incident report and witness statements were created by the district's police department (the "department") for a law enforcement purpose. FERPA is not applicable to law enforcement records maintained by the department that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. The submitted information relates to a criminal investigation by the department. Thus, these records are not subject to FERPA, and no portion of these records may be withheld on that basis.

Additionally, we note you have redacted the dates of birth of two district employees from the submitted documents. You do not assert, nor does our review of the records indicate, you have been authorized to withhold this information without seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Therefore, information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. Because we are able to discern the nature of the redacted information, we are not prevented from determining whether that information falls within the scope of the district's exceptions to disclosure. Accordingly, we will address the district's arguments with respect to the information at issue, including the redacted information. Nevertheless, we caution the district that a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering the redacted information to be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of specific information requested or representative sample if information is voluminous).

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."³ Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007(c) of the Family Code. *See* Fam. Code § 51.03(a), (b) (defining "delinquent

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

conduct” and “conduct indicating a need for supervision”). Section 58.007 provides in relevant part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

...

(e) Law enforcement records and files concerning a child may be inspected or copied by a juvenile justice agency as that term is defined by Section 58.101, a criminal justice agency as that term is defined by Section 411.082, Government Code, the child, and the child’s parent or guardian.

...

(j) Before a child or a child’s parent or guardian may inspect or copy a record or file concerning the child under Subsection (e), the custodian of the record or file shall redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law.

Fam. Code § 58.007(c), (e), (j)(2). For purposes of section 58.007(c), a “child” is a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Upon review, we find the submitted information involves juvenile delinquent conduct that occurred after September 1, 1997. Accordingly, this information is generally subject to section 58.007(c). We note, however, the requestor is the

parent of the juvenile suspect listed in the information at issue. Therefore, the requestor has a right to inspect juvenile law enforcement records concerning her juvenile child pursuant to section 58.007(e) of the Family Code. *See id.* § 58.007(e). Accordingly, the information at issue may not be withheld from this requestor under section 552.101 of the Government Code in conjunction with section 58.007(c) of the Family Code. However, section 58.007(j)(2) provides information subject to any other exception to disclosure under the Act or other law must be redacted. *See id.* § 58.007(j)(2). We note the information at issue is also subject to section 261.201 of the Family Code. Accordingly, we will consider the applicability of this section to the information at issue.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides in relevant part:

(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; 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, the submitted information pertains to an investigation of alleged or suspected child abuse by the department, which is an agency authorized to conduct investigations under chapter 261. Upon review, we find the information at issue was used or developed in an investigation under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201 as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). As you do not indicate that the department has adopted a rule that governs the release of this type of information, we assume that no such rule exists. We therefore conclude that the information at issue is confidential under section 261.201(a). Accordingly, the information at issue must be withheld in its

entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁴

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 495796

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴Because our ruling is dispositive, we do not address your arguments against disclosure.