



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 25, 2014

Ms. Jeanne C. Collins
General Counsel
El Paso Independent School District
6531 Boeing Drive
El Paso, Texas 79925

OR2014-21500

Dear Ms. Collins:

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# 544613 (EPISD ORR# 2014.379).

The El Paso Independent School District (the "district") received a request for information regarding the district's investigation of a specified incident involving the requestor's client. You state the district will release some information to the requestor with redactions made pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is exempt from disclosure under sections 552.101 and 552.135 of the Government Code.² We have

¹The 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>.

²We note the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nevertheless, because the exceptions you claim can provide compelling reasons to overcome the presumption of openness, we will consider your claimed exceptions for the submitted information. *See id.* §§ 552.007, .302, .352.

considered the exceptions you claim and reviewed the submitted representative sample of information.³

Section 552.101 of the Government Code exempts 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 made confidential by other statutes. 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 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). You claim some of the submitted information is subject to section 261.201(a) of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of this section 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). 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 or neglect investigations). However, we find Exhibit B consists of reports of alleged child abuse made to the Child Protective Services Division of the Texas Department of Family and Protective Services. Additionally, we find the information we have marked in Exhibit C consists of information used or developed in an investigation of alleged child abuse by the district’s police department or information that identifies an individual who reported alleged child abuse to the district’s police department, which is an agency authorized to conduct an investigation under chapter 261 of the Family Code. Upon review, therefore, we find this information is confidential pursuant to section 261.201(a) of the Family Code. Accordingly, the district must withhold the information in Exhibit B and the information we have marked

³We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

in Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.⁴

Section 552.135 of the Government Code provides the following:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.301(e)(1)(A). We note section 552.135 protects an informer's identity, but it does not generally encompass protection for witnesses or witness statements. We further note parents of students are not informants for purposes of section 552.135. In this instance, you claim the information you have marked in Exhibit C consists of identifying information of informers who reported possible violations of criminal law and possible violations of the Educator Code of Ethics, section 247.2 of title 19 of the Texas Administrative Code. Based on your representations and our review, we conclude the district must withhold the information we have marked under section 552.135 of the Government Code. However, we find no portion of the remaining information you have marked identifies an informer for the purposes of section 552.135, and the district may not withhold any of the remaining information at issue on that basis.

In summary, the district must withhold the information in Exhibit B and the information we have marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The district must withhold the information we have marked under section 552.135 of the Government Code. The district must release the remaining information.

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.

⁴As our ruling is dispositive for this information, we need not address your remaining argument against its disclosure.

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,



Kristi L. Godden
Assistant Attorney General
Open Records Division

KLG/cz

Ref: ID# 544613

Enc. Submitted documents

c: Requestor
(w/o enclosures)