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July 10, 2015

Mr. Ricardo R. Lopez
Counsel for the South San Antonio Independent School District
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517 Soledad Street
San Antonio, Texas 78205-1508

OR2015-14024

Dear Mr. Lopez:

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# 571055.

The South San Antonio Independent School District (the "district"), which you represent, received a request for fifteen categories of information relating to the requestor's client. The district states it has released some of the requested information. The district claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.114 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted information.

Initially, we 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"); *see also*

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>.

Open Records Decision No. 224 (1979) (student's handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). The district has submitted unredacted education records for our review. However, in this instance, we note the submitted information is part of an investigation by the district's police department (the "department"). FERPA is not applicable to records that were created by a law enforcement unit of an educational agency or institution for a law enforcement purpose and that are maintained by the law enforcement unit. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The district does not indicate, however, whether the information at issue is maintained exclusively by the department. Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of an educational agency or institution other than the law enforcement unit are not records of the law enforcement unit. *See* 34 C.F.R. § 99.8(b)(2). Thus, to the extent the information at issue is maintained by the department, the information is not encompassed by FERPA, and none of it may be withheld on that basis. However, to the extent the information at issue is maintained by a component of the district other than the department, such records are subject to FERPA. Nevertheless, because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, 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 record. Likewise, we do not address the district's argument under section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 and FERPA). However, to the extent the submitted information is not governed by FERPA, we will consider the district's remaining arguments against disclosure.

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 other statutes, such as section 261.201 of the Family Code, which provides, in relevant 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 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 [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). The district states the submitted information was used or developed in investigations of alleged or suspected child abuse by the department and Child Protective Services Division of the Department of Family and Protective Services; thus, this information falls within the scope of section 261.201 of the Family Code. *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), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). As the district does not indicate the district’s police department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Given that assumption, and based on our review, we determine the submitted information is confidential pursuant to section 261.201 of the Family Code. *See Open Records Decision No. 440 at 2 (1986) (predecessor statute).* Therefore, the district must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.²

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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

²As our ruling is dispositive, we need not address the district’s remaining argument against disclosure.

Ref: ID# 571055

Enc. Submitted documents

c: Requestor
(w/o enclosures)