



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

November 7, 2016

Mr. Robert Russo  
Counsel for the Judson Independent School District  
Walsh, Gallegos, Treviño, Russo & Kyle, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2016-24798

Dear Mr. Russo:

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# 633290.

The Judson Independent School District (the "district"), which you represent, received a request for the personnel file and any communications pertaining to a named former educator. The district states it will redact social security numbers pursuant to section 552.147(b) of the Government Code and certain information pursuant to Open Records Decision No. 684 (2009).<sup>1</sup> The district claims the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted information.

Initially, we note the district has redacted some of the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. 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,

---

<sup>1</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. Gov't Code § 552.147(b). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information without the necessity of requesting an attorney general decision.

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.<sup>2</sup> Some of the information the district submitted was created by the district's police department (the "department"). We note 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. You have also submitted redacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of these records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the district; therefore, we will not address the applicability of FERPA to this information. However, we will consider the district's other arguments against disclosure of the submitted information.

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 protected by other statutes, such as section 261.201 of the Family Code, which provides, in part, 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). Upon review, we find the information we have marked was used or developed by the department in an investigation of alleged or suspected child abuse. *See id.* §§ 261.001(1) (defining "abuse" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of chapter 261 of the Family Code). Accordingly, we find this information is subject to chapter 261 of the Family Code. We have no indication the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we

---

<sup>2</sup>A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

conclude the information we have marked is confidential pursuant to section 261.201 of the Family Code, and the district must withhold it under section 552.101 of the Government Code.<sup>3</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why release of the requested information would interfere with the detection, investigation, or prosecution of crime. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by any proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987) (section 552.108 may be invoked by any proper custodian of information relating to pending investigation or prosecution of criminal conduct). Where a non-law enforcement agency has custody of information relating to a pending case of a law enforcement agency, the custodian of records may withhold the information if it provides this office with a demonstration that the information relates to a pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

The district provides documentation from the Bexar County District Attorney’s Office (the “district attorney’s office”) stating the district attorney’s office objects to release of the information at issue because release would interfere with a pending criminal investigation and prosecution. Based on this representation, we conclude the district may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district may withhold the remaining information under section 552.108(a)(1) of the Government Code on behalf of the district attorney’s office.

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.

---

<sup>3</sup>As our ruling is dispositive, we need not address the district’s remaining argument against disclosure of this information.

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](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 633290

Enc. Submitted documents

c: Requestor  
(w/o enclosures)