



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 28, 2017

Ms. Holly A. Sherman
Counsel for the New Caney Independent School District
Rogers Morris & Grover, LLP
5718 Westheimer Road, Suite 1200
Houston, Texas 77057

OR2017-04324

Dear Ms. Sherman:

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# 647567.

The New Caney Independent School District (the "district"), which you represent, received a request for twelve categories of information pertaining to the requestor's client. You state the district has released some of the requested information. We understand the district will redact social security numbers pursuant to section 552.147(b) of the Government Code.¹ You claim 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 you claim and reviewed the submitted representative sample of information.²

Initially, we note the district has redacted student-identifying information in the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"),

¹Section 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. *See* Gov't Code § 552.147(b).

²We assume 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 those records contain substantially different types of information than that submitted to this office.

section 1232g of title 20 of the United States Code.³ However, FERPA is not applicable to law enforcement 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 submitted information consists of records that were created by the district's police department for the purpose of law enforcement. Thus, these records are not subject to FERPA, and the district may not withhold any portion of them on that basis. 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 argument 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." *Id.* § 552.101. This section encompasses information protected by other statutes. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007(c) of the Family Code, which reads as follows:

(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

³The 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: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

(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.

Fam. Code § 58.007(c). For purposes of section 58.007(c), “child” means 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). The information at issue involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of Fam. Code § 58.007). It does not appear any of the exceptions in section 58.007 apply. Therefore, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.007(c) 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,



Kaelan A. Henze
Assistant Attorney General
Open Records Division

KAH/eb

Ref: ID# 647567

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not consider your remaining arguments against disclosure.