



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 14, 2017

Mr. Jameson C. Baker  
Counsel for the Judson Independent School District  
Walsh Gallegos Trevino Russo & Kyle P.C.  
P.O. Box 460606  
San Antonio, Texas 78246-0606

OR2017-15819

Dear Mr. Baker:

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# 666970.

The Judson Independent School District (the "district"), which you represent, received a request for all information used by a named individual to respond to a filed grievance. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted identifying information from the submitted information. 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

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<sup>1</sup>We 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), (e). Nonetheless, because sections 552.101 and 552.102 of the Government Code can provide compelling reasons to overcome the presumption of openness, we will consider their applicability to the submitted information. See *id.* §§ 552.007, .302, .352.

open records ruling process under the Act.<sup>2</sup> 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”). However, 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. We note the information you have redacted is contained within law enforcement records created by the district’s police department (the “department”) for a law enforcement purpose. These records are not subject to FERPA and no portion of these records may be withheld on that basis. However, because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the district must not redact information from the information it submits to this office unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See* Gov’t Code § 552.302.

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 made confidential by other statutes, such as section 261.201(a) 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 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 assert the submitted information is confidential under section 261.201 of the Family Code. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201 of Family Code). Upon review, we find the information we marked was

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

used or developed by the district's police department in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. You do not indicate the district's police department has adopted any rules that would permit the release of the information at issue. Therefore, we conclude the information we marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.<sup>3</sup> *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, the remaining information relates to an administrative investigation by the district and we find the district has failed to demonstrate it is subject to under chapter 261 of the Family Code. Therefore, the remaining information is not confidential under section 261.201 of the Family Code, and the district may not withhold it under section 552.101 of the Government Code on that basis. As you raise no other exceptions to disclosure, the remaining information must be released.

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](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,



Emily Buchanan  
Attorney  
Open Records Division

EB/eb

Ref: ID# 666970

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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