



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 17, 2017

Mr. Austin Beck  
Assistant General Counsel  
Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2017-23801

Dear Mr. Beck:

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# 680193.

The Corpus Christi Independent School District (the "district") received a request for the requestor's personnel file including any investigative files. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception 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 open records ruling process under the Act.<sup>1</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

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<sup>1</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>.

“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 some of 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 at issue, 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). 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 investigations). However, the information we marked was used or developed by the department, which is an agency authorized to conduct investigations under chapter 261 of the Family Code. Thus, we find the information we marked was used or developed 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>2</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 any of the remaining information was used or developed in an investigation of alleged or suspected child abuse, or consists of a report of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Therefore, none of the remaining information is confidential under section 261.201 of the Family Code and none of it may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. See *id.* at 681-82. Types of information considered intimate or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. Upon review, we find the remaining information consists of information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Generally, only highly intimate information that implicates the privacy of an individual is withheld. However, in certain instances, the entirety of the information at issue must be withheld to protect the individual's privacy. In this instance, withholding only the individual's identity or certain details of the information at issue from this requestor would not preserve the subject individual's common-law right of privacy. Accordingly, to protect the privacy of the individual to whom the information relates, the district must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The district must withhold the remaining information in its entirety under section 552.101 of the Government Code in conjunction with common-law privacy.

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/>

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

[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/gw

Ref: ID# 680193

Enc. Submitted documents

c: Requestor  
(w/o enclosures)