



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 24, 2019

Ms. Ylisse Janssen
General Counsel
Austin Independent School District
1111 West Sixth Street, Suite A-240
Austin, Texas 78703

OR2019-17139

Dear Ms. Janssen:

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# 779736.

The Austin Independent School District (the "district") received a request for information pertaining to a specified incident involving a named individual. You claim that 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 claim some of the submitted information is subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a). *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 of the Government Code and FERPA). The United States Department of Education Family Policy Compliance Office has informed this office FERPA 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”). 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 submitted information consists of 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. Accordingly, we will address your 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. Section 261.201 of the Family Code provides, in relevant 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). 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 department is such an agency. The submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect conducted by the department. *See id.* §§ 101.003(a) (defining “child” for purposes of this section 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). You do not indicate the department has adopted a rule that governs the release of this

¹A copy of this letter may be found on the Office of the Attorney General’s website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

type of information. Therefore, we assume no such rule exists. Given that assumption, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.² See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

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,



Britni Ramirez
Assistant Attorney General
Open Records Division

BR/sb

Ref: ID# 779736

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address your argument against disclosure.