



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 16, 2019

Mr. Mike Atkins  
Counsel for the Ector County Independent School District  
Atkins, Hollmann, Jones, Peacock, Lewis & Lyon  
3800 East 42nd Street, Suite 500  
Odessa, Texas 79762

OR2019-19269

Dear Mr. Atkins:

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# 775532.

The Ector County Independent School District (the "district"), which you represent, received a request for information related to a specified investigation. The district states it is withholding student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> The district claims the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception the district claims and reviewed the submitted information. We have also received and considered comments from a representative for the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student 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 FERPA determinations must be made by the educational authority in possession of the education records. A 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>. Thus, we do not address the applicability of FERPA or section 552.114 of the Government Code to the requested information. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), 552.114 (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).

Initially, we note the purpose of the Act, section 552.101 *et seq.* of the Government Code, is to prescribe conditions under which members of the general public can obtain information from a governmental body. *See* Attorney General Opinion JM-119 (1983) (statutory predecessor). An official of a governmental body who, in an official capacity, requests information held by the governmental body is not acting as a member of the public in doing so. *Id.* In such a case, the Act is not implicated, and the governmental body must determine, based on its own policies and procedures, whether the requesting official may access the requested information. In this instance, the requestor is the principal of a district school and was involved in the matters at issue. The representative for the requestor asserts, in his brief to this office, the requestor seeks information in her capacity as a school official. However, we note the request was sent from the requestor's personal e-mail address and states it is a "Public Information Release Request." Further, the requestor's representative notes he is providing his comments to this office pursuant to section 552.304 of the Government Code; quotes the language of section 552.001 of the Government Code, setting forth the public policy underlying the Act; and asserts the controlling statute with regard to the release of the information to the requestor is section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Finally, on the basis of the district's response to the request and its raising of an exception to disclosure under the Act, we understand the district has interpreted the request as an attempt by the requestor to obtain the information in her capacity as a private citizen. Accordingly, in response to the instant request, we find the district is entitled by the Act to withhold from the requestor information excepted from disclosure under the Act. Therefore, we will address the submitted arguments against disclosure of the information.

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. Section 552.101 encompasses section 58.008 of the Family Code, which provides, in part:

(b) Except as provided by Subsection (d), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult records;

(2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and

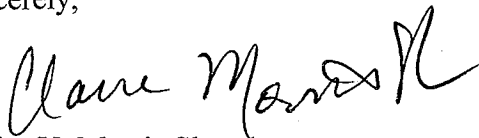
(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03(a) (defining “delinquent conduct” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See id.* § 51.02(2) (defining “child” for purposes of title 3 of Family Code). The district informs us the submitted information is part of an investigation by the district’s police department involving a juvenile offender, so as to fall within the scope of section 58.008(b). It does not appear any of the exceptions in section 58.008 apply. Based on the district’s representations, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/mo

Ref: ID# 775532

Enc. Submitted documents

c: Requestor  
(w/o enclosures)