



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 19, 2019

Mr. Christopher St. James  
Assistant General Counsel  
Spring Independent School District  
16717 Ella Boulevard  
Houston, Texas 77090

OR2019-19764

Dear Mr. St. James:

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# 776457 (PIR No. 883).

The Spring Independent School District (the "district") received a request for information related to a specified incident involving the requestor's client and another named individual. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the submitted arguments and reviewed the submitted information. We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released).

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.<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 “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 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 exempts 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.* § 51.01(2) (defining “child” for purposes of title 3 of the Family Code). We find the submitted information involves a juvenile offender, so as to fall within the scope of section 58.008(b).

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<sup>1</sup>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>

The exceptions in section 58.008 do not appear to apply. Therefore, 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.<sup>2</sup>

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,



Kimbell Kesling  
Attorney  
Open Records Division

KK/eb

Ref: ID# 776457

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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