



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 14, 2019

Mr. Robb D. Decker  
Counsel for the Northside Independent School District  
Walsh Gallegos Treviño Russo & Kyle P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2019-22455

Dear Mr. Decker:

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# 780605.

The Northside Independent School District (the "district"), which you represent, received a request for employment and disciplinary records related to the requestor's client during a specified time period. You state you will release some information to the requestor. You state you have redacted 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> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

---

<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>.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The submitted information consists of a completed investigation that is subject to section 552.022(a)(1). The district must release the submitted information pursuant to section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. Although you raise section 552.103 of the Government Code for this information, this section is a discretionary exception to disclosure and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions). Therefore, none of the submitted information may be withheld under section 552.103. However, because section 552.101 of the Government Code makes information confidential, we will address your arguments under this exception.

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 section 261.201 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a); see *id.* §§ 101.003(a) (defining “child” for purposes of chapter 261), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). You state the submitted information was used or developed in an investigation of alleged or suspected child abuse or neglect. 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). You claim some of the information at issue was created or used by the Child Protective Services Division of the Department of Family and Protective Services (“DFPS”) or the district’s police department (the “department”). Upon review, we find some of the submitted information, which you have marked, was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 and must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. However, we find the remaining information was not created or used by DFPS or the department, but instead relates to an administrative investigation by the district. Furthermore, we find you have not demonstrated the remaining information consists of the identifying information of a person who reported alleged or suspected abuse or neglect to DFPS or the department. Accordingly, we find none of the remaining information is confidential under section 261.201 and the district may not withhold it under section 552.101 on that basis.

In summary, the district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code and must release the remaining information.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Tim Neal  
Assistant Attorney General  
Open Records Division

TN/mo

Ref: ID# 780605

Enc. Submitted documents

c: Requestor  
(w/o enclosures)