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ATTORNEY GENERAL OF TEXAS

October 15, 2019

Ms. Valerie A. Carrillo
Counsel for Pflugerville Independent School District
Escamilla & Poneck, LLP
700 North Saint Mary's Street, Suite 850
San Antonio, Texas 78205

OR2019-28881

Dear Ms. Carrillo:

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# 791458.

The Pflugerville Independent School District (the "district"), which you represent, received a request for information pertaining to a specified incident involving the requestor.¹ You state you will release some information. You also state you are withholding student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You claim portions of the submitted information are excepted from disclosure under sections 552.101 and 552.135 of

¹ You state the district received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

² 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>.

the Government Code.³ We have considered the exceptions you claim and reviewed the submitted 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 of the Government Code 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 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.

Id. § 261.201(a). You assert Exhibit B is confidential under section 261.201 of the Family Code. Upon review, we find the district has not demonstrated any portion of the information at issue was used or developed in an investigation of alleged or suspected child abuse or neglect under section 261.201(a)(2). Furthermore, the district has not established the information at issue is a report of alleged or suspected abuse or neglect made under section 261.201(a)(1). *See id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). Therefore, we find you have failed to demonstrate the applicability of section 261.201 of the Family Code to the information at issue. Accordingly, the district may not withhold Exhibit B under section 552.101 of the Government Code on that basis.

Section 552.135 of the Government Code provides, in relevant part, the following:

(a) “Informer” means a student or a former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or

³ Although you also raise section 552.111 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov’t Code §§ 552.301, .302.

former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

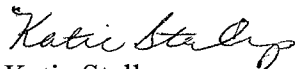
(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, witnesses and other individuals who provide information in the course of an investigation are not informants for purposes of section 552.135 of the Government Code. You state the information at issue identifies an employee who reported an alleged violation of criminal and civil laws. Based on this representation and our review, we conclude the district must withhold the information we marked under section 552.135 of the Government Code.⁴ As no other exceptions to disclosure are raised, the district 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,



Katie Stallcup
Attorney
Open Records Division

AKS/eb

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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Enc. Submitted documents

c: Requestor
(w/o enclosures)