



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

March 17, 2022

Ms. Daniella B. Martinez
Counsel for the Laredo Independent School District
Kazen, Meurer & Perez, L.L.P.
211 Calle del Norte, Suite 100
Laredo, Texas 78041

OR2022-07824

Dear Mr. Martinez:

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# 937212.

The Laredo Independent School District (the "district"), which you represent, received a request for information pertaining to the requestor's child. The district claims the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.1315 of the Government Code.¹ We have considered the claimed exceptions and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities to disclose to this office, without parental consent, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.⁷ Consequently, state and local educational authorities that receive a

¹ We note the district did not comply with the requirements of section 552.301 of the Government Code in raising section 552.1315. *See* Gov't Code § 552.301(b). Nevertheless, section 552.1315 of the Government Code can provide a compelling reason to overcome the presumption of openness caused by a failure to comply with section 552.301.

⁷A 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>.

request for education records from a member of the public under the Act must not submit education records to this office 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 law enforcement records maintained by the district’s Police Department (the “department”) that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8.

The submitted information contains an offense report and we understand the district has redacted information from this report pursuant to FERPA. However, this information was created by the department for the purpose of law enforcement. Thus, this report is not subject to FERPA and the district may not withhold any portion of it on that basis. Because we can discern the nature of the information that has been redacted, being deprived of it does not inhibit our ability to make a ruling in this instance. Nevertheless, be advised a failure to provide this office with requested information generally deprives us of the ability to determine whether information may be withheld and leaves this office with no alternative other than ordering that the redacted information be released. *See* Gov’t Code §§ 552.301(e)(1)(D) (governmental body must provide this office with copy of “specific information requested”), .302.

The district has also submitted unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records, other than to note that parents have a right of access to their own child’s education records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education records.⁸ However, we will address the applicability of the claimed exceptions to the submitted information.

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. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[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

⁸In the future, if the district does obtain parental consent to submit education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

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). The district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, we find the submitted offense report was used or developed by the department in an investigation under chapter 261. *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of section 261.201). Thus, this information is within the scope of section 261.201 of the Family Code. The district does not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Accordingly, the district must withhold the submitted offense report, which we have marked, 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).

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). Upon review, we find the district has failed to establish section 552.108 is applicable to the remaining information. Therefore, the district may not withhold any of it on that ground.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in the *Industrial Foundation* decision. *Id.* at 683. The requestor has a right of access to her child’s private information pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). We find none of the remaining information satisfies the standard articulated by the Texas Supreme Court in the *Industrial Foundation* decision. Accordingly, the remaining information is not confidential under common-law privacy, and the district may not withhold it under section 552.101 on that ground.

Section 552.1315(a)(2) of the Government Code provides,

² As our ruling is dispositive, we do not address the arguments of the district to withhold this information.

(a) Information is confidential and excepted from the [Act] if the information identifies an individual as:

...

(2) a victim of any criminal offense, if the victim was younger than 18 years of age when any element of the offense was committed.

Gov't Code § 552.1315(a)(2). Upon review, we find the district has failed to establish section 552.1315 is applicable to the remaining information. Therefore, the district may not withhold any of it on that ground.

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The district must release the remaining information.³ This ruling does not address the applicability of FERPA to the submitted educational records. Should the district determine that all or portions of this information consist of "education records" that must be withheld under FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act.

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,

James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/jm

Ref: ID# 937212

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³ Because the requestor has a special right of access to the information being released, the district must again seek a decision from this office if it receives a request for the same information from another requestor.