



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

July 19, 2022

Mr. Victor I. Cerda  
Counsel for the Eagle Pass Independent School District  
Escamilla & Poneck, LLP  
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OR2022-20950

Dear Mr. Cerda:

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# 959232 (ORR# 159-901).

The Eagle Pass Independent School District (the "district"), which you represent, received a request for a specified report. The district claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.117 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note it appears the district has redacted student-identifying information in the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> 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 includes records that were created by the department for the purpose of law enforcement. Thus, these records are not subject to FERPA, and no portion of these records may be withheld

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<sup>1</sup> The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

on that basis. Because we are able to discern the nature of the redacted information, we are not prevented from determining whether that information falls within the scope of the district's exceptions to disclosure. Accordingly, we will address the district's arguments with respect to the information at issue, including the redacted information. Nevertheless, we caution the district that 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 the redacted information to be released. *See* Gov't Code § 552.301(e)(1)(D) (governmental body must provide this office with copy of specific information requested or representative sample if information is voluminous).

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(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 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). For purposes of section 261.201, a child is defined as "a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes." *See id.* § 101.003(a). Upon review, we find the submitted information may have been used or developed by the district's police department (the "department") in an investigation under chapter 261. *See id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of section 261.201). 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. However, we are unable to determine the age of the victim at issue or whether the requestor is a parent, managing conservator, or other legal representative of the child victim. Thus, we must rule conditionally. If the victim at issue in the submitted report was under eighteen years of age at the time of the offense, then the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the victim was eighteen years of age or older at the time of the offense, then the district may not withhold the submitted information on that ground.

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). The district states the submitted information relates to a pending criminal investigation or prosecution. Based on this representation, we conclude the release of this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in the *Houston Chronicle* decision. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 at 3-4 (1976) (summarizing types of information deemed public by *Houston Chronicle* decision). Thus, with the exception of basic information, the district may withhold the submitted information under section 552.108(a)(1) of the Government Code.

In summary, if the victim at issue in the submitted report was under eighteen years of age at the time of the offense, then the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. If the victim was eighteen years of age or older at the time of the offense, then the district must release the basic information, but may withhold the remaining information under section 552.108(a)(1) of the Government 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 <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# 959232

c: Requestor