

GENERAL TRACK – MANDATORY EXCEPTIONS

The following is a list of mandatory exceptions that make certain information confidential by law. These exceptions include privacy doctrines and statutes applicable to information typically held by average governmental bodies.

First, we discuss some of the most common exceptions that make information confidential by law. We begin with common statutes found outside of the Act, then move on to common-law privacy and common exceptions found within the Act. We will finish with common statutes applicable to school district records. Each exception is followed by a brief description of the type of information that is protected and the information that our office needs you to provide in order to determine that the exception applies.

Where we say “you” in the following entries, we are referring to the governmental body that receives the request.

SECTION 552.101 GOV’T CODE + STATUTES OUTSIDE THE ACT

SECTION 552.101 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ Any and all information that is made confidential by law outside of the Public Information Act, including Texas and federal statutes and common-law and constitutional privacy. Section 552.101 must be raised in conjunction with another law outside of the Act (cannot work alone).

WHAT YOU NEED TO TELL US WHEN ASSERTING SECTION 552.101:

- Cite to the specific statute or privacy principle AND
- Explain why you believe it applies to the requested records.
- ✓ **NOTE:** You should not assert section 552.101 when claiming information is protected under one of the numbered exceptions within the Public Information Act.

Example: If the information at issue is a driver’s license number, you should only claim section 552.130; you should not claim section 552.101 in conjunction with section 552.130.

SECTION 1324A OF TITLE 8 OF THE UNITED STATES CODE

INFORMATION PROTECTED:

- ▶ Employment Eligibility Verification “Form I-9” and appended ID forms.

- ✓ NOTE: Pursuant to Open Records Decision No. 684 (2009), a previous determination issued to all governmental bodies, you are authorized to withhold a Form I-9 and its attachments without the necessity of requesting a decision from this office.

WHAT YOU NEED TO TELL US:

- Identify attachments (if any) to the Form I-9.

SECTION 6103(A) OF TITLE 26 OF THE UNITED STATES CODE

INFORMATION PROTECTED:

- ▶ “Tax return information,” including a W-4 or W-2.

- ✓ NOTE: Pursuant to Open Records Decision No. 684, you are authorized to withhold W-4 and W-2 forms without the necessity of requesting a decision from this office.

- ✓ NOTE 2: A taxpayer has a right of access to his own tax information.

SECTION 560.003 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ Fingerprints and other “biometric identifiers.”

- ✓ NOTE: An individual has a right of access to his own fingerprint information.

- ✓ NOTE 2: This protection lapses at death.

- ✓ NOTE 3: Pursuant to Open Records Decision No. 684, you are authorized to withhold a fingerprint without the necessity of requesting a decision from this office.

SECTION 1703.306 OF THE OCCUPATIONS CODE

INFORMATION PROTECTED:

- ▶ Information acquired from a polygraph examination.

- ✓ NOTE: The actual polygraph examination report, as well as the results of the polygraph examination contained in other documents, are protected.
- ✓ NOTE 2: You have the discretion to release this information to the polygraph examinee.

SECTION 159.002 OF THE MEDICAL PRACTICE ACT (MPA), SUBTITLE B OF TITLE 3 OF THE OCCUPATIONS CODE

INFORMATION PROTECTED:

- ▶ A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient or a record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician.
- ✓ NOTE: Information subject to the MPA includes both medical records and information *obtained from* those medical records. In addition, because hospital treatment is routinely conducted under the supervision of physicians, documents relating to diagnosis and treatment during a hospital stay also constitute protected medical records.
- ✓ NOTE 2: Section 159.001 defines “patient” as a person who consults with or is seen by a physician to receive medical care. Thus, a deceased individual cannot be a “patient” under section 159.002. So, for example, you may not claim MPA for an autopsy report conducted on a deceased individual.

SECTION 611.002 OF THE HEALTH & SAFETY CODE

INFORMATION PROTECTED:

- ▶ Communications between a patient and a mental health professional and records of the identity, diagnosis or treatment of a mental health patient created or maintained by a mental health professional.

AMERICANS WITH DISABILITIES ACT OF 1990 (“ADA”)

INFORMATION PROTECTED:

- ▶ Certain medical records pertaining to an employee’s disability (The ADA provides that this confidential information must be (1) collected and maintained on separate forms, (2) kept in separate medical files and (3) treated as a confidential medical record.)
- ▶ The EEOC has determined that information subject to the ADA includes: (1) information about the medical conditions and medical histories of applicants or employees; (2) information obtained in the course of a “fitness for duty examination” conducted to determine whether an employee is still able to perform the essential functions of his or her job; (3) specific information about an individual’s disability and related functional limitations; as well as (4) general statements that an

individual has a disability or that an ADA reasonable accommodation has been provided for a particular individual.

WHAT YOU NEED TO TELL US:

- Because not all medical information pertaining to an employee is subject to the ADA, you must tell us whether the records at issue are being held by your agency for purposes of and in accordance with the ADA.

SECTION 143.089 OF THE LOCAL GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ Personnel files of police officers and fire fighters of municipalities that have elected to become civil service cities under chapter 143 of the Local Government Code.
- ▶ Section 143.089 contemplates two different types of personnel files:
 - (1) A police officer's/fire fighter's civil service file that the civil service director must maintain under section 143.089(a). Information maintained in this civil service file is subject to release.
 - (2) An internal file that the police or fire department may maintain for its own use under section 143.089(g). Information maintained in this section 143.089(g) file is confidential.
- ✓ NOTE: When a police or fire department investigates a police officer's or fire fighter's misconduct and takes disciplinary action against that individual (either removal, suspension, demotion, or uncompensated duty), it is required to place all records relating to the investigation and disciplinary action in the police officer's or fire fighter's civil service file under section 143.089(a). Evaluations and commendations must also be placed in the civil service file maintained under section 143.089(a).

WHAT YOU NEED TO TELL US:

- Section 143.089 only applies to those municipalities that have elected to become civil service cities. So you must tell us that your city is a civil service city under chapter 143.
- You must tell us what information is maintained in the police or fire department's internal section 143.089(g) file.

SECTION 58.007(C) OF THE FAMILY CODE

INFORMATION PROTECTED:

- ▶ Law enforcement records of a child relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997.

- ✓ NOTE: Section 58.007(c) only applies to a child suspect or offender who is at least 10 years old and under 17 years old at the time of the conduct.
- ✓ NOTE 2: This section is only applicable if a child is listed as a suspect or offender. Section 58.007(c) does not apply to a law enforcement record only involving a child victim or witness.
- ✓ NOTE 3: Records must relate to a child suspect or offender who is engaged in:
 - **“Delinquent conduct”** - which includes certain alcohol-related offense and conduct that violates a penal law of Texas or the United States punishable by imprisonment or confinement in jail. It generally does not include traffic offenses.
 - **“Conduct indicating a need for supervision”** - which includes runaways and conduct that violates the penal laws of Texas that is punishable by fine only or the penal ordinances of a political subdivision of Texas. It generally does not include traffic offenses.

EXCEPTIONS TO THE GENERAL RULE:

- ▶ Pursuant to section 58.007(e), a governmental body cannot withhold the offending child’s law enforcement records from the child, the child’s parent, or guardian under section 58.007(c).

BUT . . .

- ▶ Under section 58.007(j), a governmental body:
 - Can raise other exceptions to disclosure for the records; and
 - Must withhold any personally identifiable information about a child suspect or offender who is not the child of the authorized requestor; and
 - Must withhold any personally identifiable information about a child victim or witness who is under 18 years old and is not the child of the authorized requestor.

WHAT YOU NEED TO TELL US:

- Whether the conduct qualifies as delinquent conduct or conduct in need of supervision.
- Inform our office if you know the requestor has a relationship with the child suspect or offender, for example a parent or guardian.
- If it is not clear from the face of the documents, inform our office of the age of the child suspect or offender, as well as when the conduct occurred.

FORMER SECTION 51.14 OF THE FAMILY CODE

INFORMATION PROTECTED:

- ▶ Law enforcement records of a child relating to delinquent conduct or conduct indicating a need for supervision that occurred before January 1, 1996.
 - ✓ NOTE: Just like section 58.007(c), a child suspect or offender is defined as a child who is at least 10 years old and under 17 years old at the time of the conduct.
 - ✓ NOTE 2: These records must also relate to a child suspect or offender engaged in “delinquent conduct” or “conduct indicating a need for supervision.”
 - ✓ NOTE 3: Section 51.14 does not have a provision similar to section 58.007(e).
 - ✓ NOTE 4: The Legislature chose not make section 58.007 retroactive. Therefore, if the conduct occurred between January 1, 1996, and September 1, 1997, the records are not subject to either former section 51.14 or section 58.007. So, the records are not confidential under either section BUT other exceptions may apply.

SECTION 261.201 OF THE FAMILY CODE

INFORMATION PROTECTED:

- ▶ Reports of abuse or neglect of a child, and the identity of the person making the report.
- ▶ Records of an investigation of alleged child abuse or neglect made by an agency authorized to conduct a chapter 261 investigation.
 - ✓ NOTE: A school district is not an agency authorized to conduct a chapter 261 investigation. However, a district’s police department is a law enforcement agency authorized to conduct a chapter 261 investigation.
 - ✓ NOTE 2: Section 261.201 applies to a child victim of abuse or neglect who was under the age of 18 at the time of the incident.
 - ✓ NOTE 3: “Abuse” and “Neglect” are defined in section 261.001 of the Family Code, and include sexual assault, indecent exposure, and neglectful supervision.

EXCEPTIONS TO THE GENERAL RULE:

- ▶ Pursuant to section 261.201(k), the investigating agency may not withhold information pertaining to the alleged abuse or neglect of a child under section 261.201(a) from a parent or guardian of a child victim, provided the parent or guardian is not alleged to have committed the abuse.

BUT . . .

- ▶ Under section 261.201(l), the investigating agency:
 - Must withhold any personally identifiable information about another victim (other than the child at issue in the report or another child of the authorized requestor) or witness under 18 who is not a child of the authorized requestor; and
 - Can raise other exceptions to disclosure for the records; and
 - Must withhold the identity of the person who made the report.

WHAT YOU NEED TO TELL US:

- Inform our office which entity conducted the investigation.
- If it is not clear from the face of the documents, inform our office of the age of the alleged victim.
- Inform our office how the records constitute records of an investigation of child abuse or neglect.
- And inform our office if you know the requestor has a relationship with the alleged child victim, for example a parent or guardian, or is the adult child.

SECTION 552.101 GOV'T CODE + COMMON-LAW PRIVACY

INFORMATION PROTECTED:

- ▶ Information that (1) contains highly intimate or embarrassing facts, which if publicized would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public.
 - ✓ NOTE: Information must meet both prongs of this test to be withheld. Although something might be considered highly intimate or embarrassing, if the information is of legitimate public interest it cannot be withheld.
 - ✓ NOTE 2: Information subject to common-law privacy includes:
 - Dates of birth
 - Personal financial information
 - Medical information
 - Information relating to a sexual harassment investigation
 - ✓ NOTE 3: The public generally has a legitimate interest in information that relates

to public employment and public employees (job qualifications, performance of public employees, reasons for dismissal, demotion, promotion, or resignation of public employees).

- ✓ NOTE 4: The home addresses and telephone numbers of private citizens are generally not protected under common-law privacy. However, section 552.117 of the Government Code may provide protection of your employees' addresses and telephone numbers in certain instances.

DATES OF BIRTH

INFORMATION PROTECTED:

- ▶ The Third Court of Appeals in *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.) determined dates of birth of public citizens are protected by common-law privacy.
- ✓ NOTE: Dates of birth belonging to individuals who are not identified or who have been de-identified are not protected by common-law privacy. The privacy interest of those individuals are protected because they are not identified.

PERSONAL FINANCIAL INFORMATION

INFORMATION PROTECTED:

- ▶ Personal financial information not relating to a financial transaction between an individual and a governmental body.
- ✓ NOTE: Examples:
 - Assets or debts
 - Optional insurance coverage
 - Credit history
 - Direct deposit authorization
 - Lien information
 - Net salary
 - Designation of beneficiaries for retirement benefits
- ✓ NOTE 2: There is a legitimate public interest in the essential facts about a financial transaction between you and your employees.
- ✓ NOTE 3: Information relating to an employee's gross salary or participation in a group insurance fund funded in part or in full by you is not withheld under common-law privacy.
 - A governmental body needs to tell the OAG what insurance coverages are optional or not funded by the governmental body.

- ✓ NOTE 4: Pursuant to Open Records Decision No. 684, governmental bodies are authorized to withhold direct deposit authorization forms without requesting a decision from this office.

MEDICAL INFORMATION

INFORMATION PROTECTED:

- ▶ Information relating to specific illnesses or disabilities.

- ✓ NOTE: Examples:

- Illnesses
- Operations
- Physical handicaps
- Psychiatric treatment of mental disorders
- Specific prescription medications, not the fact an individual is taking medication
- Pregnancy
- Blood type

SEXUAL HARASSMENT INVESTIGATION INFORMATION

INFORMATION PROTECTED:

- ▶ If the investigation contains an adequate summary, then withhold (1) all investigation information except the statement of the accused and the adequate summary and (2) the identities of the victims and witnesses of sexual harassment within the adequate summary and statement of the accused. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied).
- ▶ If the information does not contain an adequate summary, the identities of the victims and witnesses of sexual harassment must be withheld throughout the sexual harassment investigation.
- ✓ NOTE: An adequate summary includes the allegations as well as the results of the investigation.
- ✓ NOTE 2: In either case, the identity of the person accused of sexual harassment and his/her statement are not protected.
- ✓ NOTE 3: This analysis only applies to sexual harassment investigations in the workplace.

EXCEPTIONS TO THE GENERAL RULE:

- ▶ Under section 552.023 an individual has a special right of access to information that relates to him/her that is protected from disclosure by common-law privacy.

- ▶ Privacy rights lapse upon the death of the individual whose information is at issue.

WHAT YOU NEED TO TELL US:

- Whether any unique circumstances might apply specifically to the information at issue.

EXCEPTIONS IN THE ACT

SECTION 552.102(a) OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ Information in your employees' personnel files, which if disclosed would constitute a clearly unwarranted invasion of personal privacy.
 - ✓ NOTE: Under *Texas Comptroller*, section 552.102(a) excepts from disclosure the birth date of an employee of a governmental body in a record maintained by his or her employer in an employment context. For dates of birth not held in an employment context, see common-law privacy discussion above.

SECTION 552.117(a)(1) OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ The following information of your current or former employee or official if he/she elected to withhold such information from disclosure:
 - Current and former home addresses
 - Current and former home telephone numbers
 - Emergency contact information
 - Social security number
 - Information that reveals whether the employee or official has family members
- ✓ NOTE: Section 552.117 only applies to records held by you in an employment capacity.
- ✓ NOTE 2: Section 552.117 does not apply to information about individuals who were never employed by your governmental body. So, for example, if you have addresses and phone numbers of people who provided references for one of your employees and who work for a different governmental body, that information is not protected by section 552.117.
- ✓ NOTE 3: Section 552.117 does not protect information belonging to applicants, volunteers or contractors.
- ✓ NOTE 4: Post Office Boxes are not "home addresses" for purposes of section 552.117.

- ✓ NOTE 5: You may only withhold cellular telephone numbers and pager numbers if the service is purchased by the employee at issue with his/her own personal funds. Cellular telephone numbers and pager numbers that are government-issued are not excepted under section 552.117.
- ✓ NOTE 6: Section 552.024(c)(2) permits a governmental body to redact information subject to section 552.117(a)(1) without requesting a ruling from the OAG.
 - The employee or official must have made a proper written election, before you received the request, to keep his/her home address, home telephone number, emergency contact information, social security number, and information revealing whether the person has family members private.
 - If a governmental body redacts information pursuant to section 552.024(c)(2) without requesting a ruling from the OAG, the governmental body must provide the requestor with the form prescribed by the OAG.
 - A copy of the form can be found on the OAG's website, www.texasattorneygeneral.gov/open/ord_forms.shtml.

EXCEPTIONS TO THE GENERAL RULE:

- ▶ Under section 552.023 an individual has a special right of access to his/her own section 552.117 information.

WHAT YOU NEED TO TELL US:

- You should inform us that the employee made a proper written election, before you received the request, to keep this information confidential. It would also be helpful to provide a copy of the election form.

SECTION 552.117(a)(2) OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ The current and former home addresses and home telephone numbers, emergency contact information, social security number, and personal family member information of a peace officer employed by your governmental body. The peace officer employed by your governmental body does not have to elect to withhold such information from disclosure in order for section 552.117(a)(2) to apply.
- ✓ NOTE: Applies to a licensed peace officer as defined by article 2.12 of the Texas Code of Criminal Procedure.

SECTION 552.1175 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ The current and former home addresses and home telephone numbers, emergency contact information, date of birth, social security number, and information that reveals whether the person has family members of the following people are protected:
 - (1) peace officers as defined by Article 2.12, Code of Criminal Procedure;
 - (2) county jailers as defined by Section 1701.001, Occupations Code;
 - (3) current or former employees of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department;
 - (4) commissioned security officers as defined by Section 1702.002, Occupations Code;
 - (5) employees of a district attorney, criminal district attorney, or county or municipal attorney whose jurisdiction includes any criminal law or child protective services matters;
 - (6) officers and employees of a community supervision and corrections department established under Chapter 76 who perform a duty described by Section 76.004(b) of the Government Code;
 - (7) criminal investigators of the United States as described by Article 2.122(a), Code of Criminal Procedure;
 - (8) police officers and inspectors of the United States Federal Protective Service;
 - (9) current and former employees of the office of the attorney general who are or were assigned to a division of that office the duties of which involve law enforcement;
 - (10) current or former juvenile probation and detention officers certified by the Texas Juvenile Justice Department, or the predecessors in function of the department, under Title 12, Human Resources Code;
 - (11) current or former employees of a juvenile justice program or facility, as those terms are defined by Section 261.405, Family Code;
 - (12) current or former employees of the Texas Juvenile Justice Department or the predecessors in function of the department; and
 - (13) federal judges and state judges as defined by Section 13.0021, Election Code.

✓ NOTE: Section 552.1175 applies to information regarding:

- (1) individuals who work for you, but the information is held in a non-employment capacity.

Example: An officer who is employed with your governmental body's police department is named as a witness in an offense report. His personal information found in the offense report can be protected by this exception if proper election is made.

OR

- (2) individuals who never worked for you, but are employed by another governmental body.

Example: You have the home address and home phone number of a police officer who works for a different governmental body and provided a reference for one of your employees. Her personal information can be protected by this exception if the police officer makes an election with your agency.

- ✓ NOTE 2: Section 552.1175(f) permits a governmental body to redact information subject to section 552.1175(b) without requesting a ruling from the OAG.
 - If a governmental body redacts information pursuant to section 552.024(c)(2) without requesting a ruling from the OAG, the governmental body must provide the requestor with the form prescribed by the OAG.
 - A copy of the form can be found on the OAG’s website, www.texasattorneygeneral.gov/open/ord_forms.shtml.

WHAT YOU NEED TO TELL US...	552.117(a)(1)	552.117(a)(2)	552.1175
To whom does the information belong and how is it held?	Information pertaining to current and former employees of your governmental body , held by you in an employment capacity .	Information pertaining to peace officers employed by your governmental body , held by you in an employment capacity .	Information pertaining to peace officers and certain other law enforcement personnel either (1) employed by you , but the information is held in a non-employment capacity , or (2) employed by another governmental body.
Has the individual elected confidentiality?	Employee elected confidentiality before you received the request.	Protection is automatic.	Individual makes an election with your governmental body (can be after you received the request).

SECTION 552.130 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ Information relating to motor vehicle records and personal identification documents issued by an agency of the State of Texas or another state or country. This information includes a driver’s license number, class and expiration date, as well as an identification number and expiration date

from an ID card. It also includes a license plate number, class and expiration date, as well as a vehicle identification number (VIN), registration sticker number, class and expiration date.

- ✓ NOTE: Section 552.130(c) permits a governmental body to redact information subject to subsection 552.130(a) without requesting a ruling from the OAG.
 - If a governmental body redacts information pursuant to section 552.130(c) without requesting a ruling from the OAG, the governmental body must provide the requestor with the form prescribed by the OAG.
 - A copy of the form can be found on the OAG's website, www.texasattorneygeneral.gov/open/ord_forms.shtml.

EXCEPTIONS TO THE GENERAL RULE:

- ▶ Under section 552.023 an individual has a special right of access to his/her own motor vehicle record information.
- ▶ Section 552.130 does not apply to motor vehicle record information that pertains to solely a deceased individual.

SECTION 552.136 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ Credit card, debit card, charge card, or access device number (for example: bank account numbers, personal identification numbers (PINs), and insurance policy numbers are all protected by this exception).
- ✓ NOTE: This exception does not apply to all account-related information. For example, check numbers and credit card transaction and authorization numbers are not protected.
- ✓ NOTE 2: Section 552.136(c) provides that a governmental body may redact information subject to section 552.136(b) without the necessity of requesting a decision from this office.
 - If a governmental body redacts information pursuant to section 552.136(c) without requesting a ruling from the OAG, the governmental body must provide the requestor with the form prescribed by the OAG.
 - A copy of the form can be found on the OAG's website, www.texasattorneygeneral.gov/open/ord_forms.shtml.

EXCEPTION TO THE GENERAL RULE:

- ▶ Under section 552.023 an individual has a special right of access to his/her own account and access

device numbers.

WHAT YOU NEED TO TELL US:

- You must explain how the number at issue can be used to obtain money, goods, services or another thing of value. This is especially important in instances where the information is not clearly a bank account or credit card number. For example, one governmental body has a six number employee identification number that is also part of the employee's credit union account number.

SECTION 552.137 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ Most e-mail addresses of members of the public, unless the member of the public has consented to its release.
 - ✓ NOTE: This section does not apply to a governmental employee's work e-mail address because that address belongs to the individual as a government employee rather than as a member of the public.
 - ✓ NOTE 2: This section does not apply to the private e-mail addresses of government officials who use their private e-mail addresses to conduct official government business. *See Austin Bulldog v. Leffingwell*, No. 03-13-00604-CV (Tex. App.—Austin April 8, 2016) (mem. op.).
 - ✓ NOTE 3: This section does not apply to certain e-mail addresses listed in subsection (c) of the statute, including e-mail addresses in letterhead, ones that are submitted to you as a part of a response to a request for proposals, and ones belonging to a person who has a contractual relationship with you.
 - ✓ NOTE 4: This section does not apply to a business's general e-mail address or a website address.
 - ✓ NOTE 5: Pursuant to Open Records Decision No. 684, you are authorized to withhold an e-mail address of a member of the public under section 552.137 without the necessity of requesting a decision from this office.

EXCEPTION TO THE GENERAL RULE:

- ▶ An individual has a right of access to his/her own e-mail address.

WHAT YOU NEED TO TELL US:

- That the address was provided to you by a member of the public for purposes of communicating with you electronically, and that it is not one of the types specifically excluded by subsection (c).

- Whether or not the member of the public to whom the address belongs has given you consent for its release.

SECTION 552.140 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ A military veteran's Department of Defense Form DD-214 or other military discharge record if it first comes into your possession on or after September 1, 2003.
- ✓ NOTE: Pursuant to Open Records Decision No. 684, you are authorized to withhold a DD-214 form that is first recorded or first comes into the possession of your governmental body on or after September 1, 2003 without the necessity of requesting a decision from this office.

EXCEPTION TO THE GENERAL RULE:

- ▶ An individual has a right of access to his/her own DD-214 form.

WHAT YOU NEED TO TELL US:

- When the record at issue first came into your possession.

SECTION 552.152 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ Information in the custody of a governmental body that relates to an employee or officer of the governmental body if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat of physical harm.

SCHOOL DISTRICT RECORDS

Below is a list of mandatory exceptions specifically applicable to school district records. These mandatory exceptions can apply to different categories of information held by school districts, including education records, district personnel information, and audit working papers.

EDUCATION RECORDS

SECTION 1232G OF TITLE 20 OF THE UNITED STATES CODE, THE FAMILY EDUCATIONAL

RIGHTS & PRIVACY ACT (“FERPA”)

INFORMATION PROTECTED:

- ▶ The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed our office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information of students contained in education records for the purpose of our review in the open records ruling process. Consequently, if the district receives an open records request for education records from a member of the public, the district must not submit education records to our office in unredacted form, or in a form in which personally identifiable information of students is disclosed.

- ✓ NOTE: We have posted a copy of the letter from the DOE to this office on the Attorney General’s website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>

- ✓ NOTE 2: Unless a parent has consented, our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made. The DOE has determined that the district, as the educational authority in possession of the education records, must make the FERPA determinations.

- ✓ NOTE 3: Parents have a right of access to their own child’s education records under FERPA, which prevails over inconsistent provisions of state law, such as section 552.103 of the Government Code.

- ✓ NOTE 4: FERPA is not applicable to law enforcement records maintained by a school district’s police department that were created by the department for a law enforcement purpose.
 - However, records created by a law enforcement entity for a law enforcement purpose that are maintained by a component of an educational agency or institution other than the law enforcement unit or that are used exclusively for a non-law enforcement purpose, such as a disciplinary proceeding, are not records of the law enforcement unit and may be considered education records subject to FERPA.

WHAT YOU NEED TO TELL US:

- If the district submits records to our office seeking a ruling under other exceptions, please inform us when the district has redacted information in those records pursuant to FERPA.

SECTION 552.114 OF THE GOVERNMENT CODE

RECORDS OF A STUDENT - SECTION 552.114(A)(1)

- ▶ Pursuant to Open Records Decision No. 539, the same analysis applies under section 552.114 and FERPA. As mentioned above, determinations about whether education records contain personally

identifiable information of students must be made by the school district. As our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we likewise cannot address arguments under section 552.114 for student records.

RECORDS OF AN APPLICANT - SECTION 552.114(A)(2)

INFORMATION PROTECTED:

- ▶ Information in a record of an applicant for admission to an educational institution, including a transfer applicant, is confidential under the Act if the educational institution holding the record is funded in whole or in part by state revenue.
- ✓ NOTE: An educational institution may redact student record information without requesting a decision from the attorney general under section 552.114(d).
- ✓ NOTE 2: The educational institution shall disclose information that is related to the applicant's application for admission and was provided to the educational institution by the applicant to an applicant or a parent or legal guardian of a minor applicant.

CERTAIN DISTRICT PERSONNEL INFORMATION

SECTION 21.048(C-1) OF THE EDUCATION CODE

INFORMATION PROTECTED:

- ▶ The results of an examination administered under section 21.048 unless disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by section 21.057 of the Education Code.

SECTION 21.355 OF THE EDUCATION CODE

INFORMATION PROTECTED:

- ▶ A document evaluating the performance of a teacher or administrator.

WHAT YOU NEED TO TELL US:

- The teacher or administrator is required to and does in fact hold a teaching or administrator's certificate under subchapter B of chapter 21 of the Education Code, or a school district teaching permit under section 21.055 of the Education Code; AND
- At the time of the evaluation, the teacher was engaged in the process of teaching, or the administrator was performing the functions of an administrator.

SECTION 552.102(B) OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ Information on a college transcript maintained in the personnel file of a professional public school employee, with the exception of the employee’s name, the courses taken, and the degree obtained, which must be released.

- ✓ NOTE: This exception does not apply to employees of colleges or universities.

- ✓ NOTE 2: Pursuant to the legislative history, this exception applies to only the transcripts of employees who are professional educators, rather than the transcripts of all public school employees.

CRIMINAL HISTORY RECORD INFORMATION (“CHRI”)

- ▶ Chapter 411 of the Government Code authorizes the Texas Department of Public Safety (the “DPS”) to compile and maintain CHRI from law enforcement agencies throughout the state and to provide access to authorized persons to criminal history records.

- ▶ CHRI is “information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.”

SECTION 411.097 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ CHRI obtained from DPS that relates to a district applicant or employee that a school district is required or authorized to obtain under subchapter C of chapter 22 of the Education Code.

- ✓ NOTE: Section 411.097 authorizes the release of CHRI: (1) to the individual who is the subject of the information, (2) to the Texas Education Agency, (3) to the State Board for Educator Certification, (4) to the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2), or (5) by court order.

SECTION 411.0845 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ CHRI obtained from the DPS electronic clearinghouse and subscription service, which school districts are authorized to obtain pursuant to section 22.083(a-1) of the Education Code.

WHAT YOU NEED TO TELL US:

- Inform our office from where you obtained the information.

SECTIONS 552.024(A-1) AND 552.147(A-1) OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ The social security numbers of current and former district employees are confidential and must be withheld under section 552.147(a-1).
- ▶ Section 552.147(a-1) makes a district employee's social security number confidential. Section 552.024(a-1) states a district may not require a current or former employee to choose whether to allow public access to the employee's social security number. The legislative history of sections 552.024(a-1) and 552.147(a-1) reflects the protection afforded by section 552.147(a-1) was intended to extend to both current and former school district employees.

SECTION 552.135 OF THE GOVERNMENT CODE

INFORMATION PROTECTED:

- ▶ The identity of a student or former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
 - ✓ NOTE: Individuals who provide information in the course of an investigation, but who do not make a report, such as interviewees, are not informers for the purposes of section 552.135.
 - ✓ NOTE 2: Information may not be withheld under section 552.135 if the informer consents to the release of his/her identity, or if the informer planned, initiated or participated in the possible violation.

WHAT YOU NEED TO TELL US:

- The Legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law." Therefore, the district must clearly identify to our office both the informer, and the specific civil, criminal or regulatory law that is alleged to have been violated.

EXCEPTIONS THAT YOU MIGHT THINK APPLY BUT PROBABLY DO NOT

THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA):

- ▶ HIPAA allows a covered entity to use or disclose protected health information if required by law and if limited to the requirements of such law. The court, in *Abbott v. Texas Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.), determined that the Public Information Act is a law requiring release of information. So, HIPAA allows for release in response to a request under the Public Information Act. Other statutes, such as the MPA, may apply.

SECTION 552.115 OF THE GOVERNMENT CODE (BIRTH AND DEATH RECORDS)

- ▶ This exception protects birth and death records but only when maintained by the Vital Statistics Unit of the Texas Department of State Health Services or a local registration official. So this exception does not apply to personnel files. However, some of the information contained in birth and death records maintained by an employing governmental body may be excepted pursuant to section 552.117.

SECTION 552.141 OF THE GOVERNMENT CODE (APPLICATION FOR MARRIAGE LICENSE)

- ▶ This exception protects social security number information in an application for a marriage license but only when the application is maintained by a county clerk. So this exception would not generally apply to a personnel file.