



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

December 4, 2002

Mr. Randall L. Meredith  
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Corpus Christi Independent School District  
P.O. Box 110  
Corpus Christi, Texas 78403-0110

OR2002-6907

Dear Mr. Meredith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173125.

The Corpus Christi Independent School District (the "district") received a request for a personnel file and records of an investigation pertaining to a named former district employee. You state that you have provided the requested personnel file to the requestor. You claim, however, that information pertaining to the investigation is excepted from disclosure under section 552.102 of the Government Code. We have considered your comments and reviewed the submitted information.

As a preliminary matter, we address the district's obligations under section 552.301 of the Government Code. Section 552.301 provides in part:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Public Information Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the tenth business day after the date of receiving the written request.

(c) For purposes of this subchapter, a written request includes a request made in writing that is sent to the officer for public information, or the person designated by that officer, by electronic mail or facsimile transmission.

The requestor argues that the district failed to comply with the ten business day deadline mandated by section 552.301(b). The district received the requestor's first request for information via facsimile transmission on August 26, 2002. You contend that the district did not consider this communication to be a request for information under the Public Information Act (the "Act") until receiving the requestor's facsimile of September 16, 2002. Thus, you contend that the ten business day deadline for the district's response should be calculated from September 16, 2002.

A governmental body's duty under section 552.301(a) to request a ruling from the attorney general arises upon the governmental body's receipt of a written request for information. Open Records Decision No. 304 (1982). Generally, a request for information need not specifically name the Act. Open Records Decision No. 497 (1988). A written communication that can be reasonably judged to be a request for public information is a request for information under the Act. *Id.* However, section 552.301(c) provides that a request for information made by facsimile must be addressed to the governmental body's officer for public information, or the officer's designee. Under section 552.201 of the Government Code, the chief administrative officer of a governmental body is the officer for public information. Gov't Code § 552.201(a). For a school district, the chief administrative officer and officer for public information is the district superintendent. *See Keever v. Finlan*, 988 S.W.2d 300 (Tex.App--Dallas 1999, pet. dismiss'd). The requestor's facsimile communication of August 26 was addressed to the district's Director of Certified Personnel. We are unable to determine from the information provided whether the Director of Certified Personnel is the superintendent's designee for purposes of section 552.301(c) of the Act. Thus, we are unable to determine whether the request of August 26 was a valid request for information under the Act.

You did not request a decision from this office until September 27, 2002. In the event that the request of August 26, 2002 was sent to the superintendent's designated officer for public information, and therefore was a valid request under the Act, the district failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See Gov't Code § 552.302; Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

Section 552.102 provides a compelling reason to overcome the presumption of openness. *See* Open Records Decision No. 630 (1994) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Thus, even if the district did not timely request a decision from this office, because you have raised a confidentiality provision under the Act as an exception to disclosure, we will address your argument under 552.102 of the Government Code.

First, however, we note that a portion of the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."<sup>1</sup> This section encompasses information protected by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, 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.

The submitted documents consist of a memorandum from a district administrator, and an investigation completed by the Texas Department of Protective and Regulatory Services ("DPRS"). The documents indicate that DPRS provided the investigation documents to the district under section 261.406 of the Family Code. *See* Fam. Code § 261.406(a)-(b). Upon review, we determine that the submitted DPRS documents represent files, reports, records, communications, 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. The requestor does not fall within any category of persons or entities that are authorized to receive this confidential information under section 261.201. *See* Fam. Code §§ 261.201(b)-(g) (enumerating entities authorized to receive section 261.201 information). Accordingly, we determine that the submitted DPRS investigation is confidential in its entirety under section 261.201 of the Family Code and must be withheld from the requestor under

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<sup>1</sup>The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

section 552.101 of the Government Code. *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute).

The submitted memorandum, which we have marked, was created by a district administrator and is not part of the chapter 261 investigation. *See* Fam. Code §§ 261.301, .406 (DPRS or an appropriate state or local law enforcement agency are authorized to conduct a chapter 261 investigation). You contend that the district memorandum is excepted from disclosure under section 552.102 of the Government Code. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the Act. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure under common-law privacy if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Id.* at 685. We determine that the district memorandum concerns the investigation and disposition of a complaint against the former employee and, consequently, is subject to a legitimate public interest. *See* Open Records Decision Nos. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 405 at 2-3 (1983) (public has interest in manner in which public employee performs his job), 329 at 2 (1982) (information relating to complaints against public employees and discipline resulting therefrom is not protected under former section 552.101 or 552.102), 208 at 2 (1978) (information relating to complaint against public employee and disposition of the complaint is not protected under either the constitutional or common-law right of privacy); *see also* Open Records Decision No. 423 at 2 (1984) (scope of public employee privacy is narrow). Accordingly, we determine the district may not withhold the memorandum under section 552.102 of the Government Code.

We note, however, that portions of the district memorandum at issue fall within the scope of the Family Educational and Privacy Rights Act, (“FERPA”), 20 U.S.C. § 1232g. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). “Education records” are those records that contain information directly related to a student and are maintained by an educational agency or

institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Information relating to a student must be withheld from required public disclosure under FERPA to the extent “reasonable and necessary to avoid personally identifying a particular student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978). We have marked the information in the district memorandum that must be withheld under FERPA.

Finally, we note that this request for information was submitted to the district by another school district, rather than by a member of the public. Although information may generally be transferred between governmental bodies without violating its confidential character, the transfer of confidential information from one governmental body to another is prohibited where the relevant confidentiality statute authorizes release of the confidential information only to specific entities, and the requesting governmental body is not among the statute’s enumerated entities. *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (intergovernmental transfer permitted under statutory confidentiality provision only where disclosure to another governmental agency is required or authorized by law), JM-590 at 4-5 (1986) (where governmental body is not included among expressly enumerated entities to which confidential information may be disclosed, information may not be transferred to that governmental body); *see also* Open Records Decision Nos. 655 (1997), 650 (1996) (transfer of confidential information to federal agency impermissible unless federal law requires its disclosure). In this case, section 261.201 of the Family Code and FERPA are the applicable confidentiality statutes. Section 261.201 of the Family Code and FERPA authorize the transfer of confidential information to enumerated persons, agencies, and organizations for certain specified purposes. Fam. Code § 261.201; 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.31. The requestor is not one of the persons, agencies, or organizations to which the school district may transfer information made confidential under section 261.201 of the Family Code or FERPA. Therefore, the school district must not release the section 261.201 information or the FERPA information to the requestor.

In summary, the DPRS investigation documents are confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code. We have marked the information in the district memorandum that the district must withhold under FERPA. The remainder of the district memorandum must be released to the requestor.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.*

§ 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 173125

Enc: Submitted documents

c: Mr. Juan J. Cruz  
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