



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 24, 2012

Ms. Sandra D. Carpenter  
Walsh, Anderson, Brown, Gallegos, Green & Trevino, P.C.  
10375 Richmond Avenue, Suite 750  
Houston, Texas 77042

OR2012-05814

Dear Ms. Carpenter:

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# 451677.

The Willis Independent School District (the "district"), which you represent, received a request for all complaints that mention a named teacher's aide during her employment. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.114, and 552.135 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>2</sup> Consequently, state and local educational authorities that receive a request for

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<sup>1</sup>Although you also raise section 552.022 of the Government Code, we note this section is not an exception to disclosure under the Act. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are expressly confidential under the Act or other law. *See* Gov't Code § 552.022.

<sup>2</sup>A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted redacted documents to this office for our review. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted documents. Such determinations under FERPA must be made by the educational authority in possession of such records.<sup>3</sup> Accordingly, we also do not address your argument under section 552.114 of the Government Code. *See* Gov’t Code §§ 552.026 (incorporating FERPA into Act), 552.114 (excepting from disclosure “student records”); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 and FERPA). We will, however, address the applicability of the other claimed exceptions to 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.” This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find the submitted information is not highly intimate or embarrassing. Therefore, the submitted information is not confidential under common-law privacy, and the district may not withhold it under section 552.101 on that ground.

You also claim the submitted information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) 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). Upon review, we find none of the submitted information is excepted under section 552.102(a) of the Government Code. Accordingly, none of the submitted information may be withheld on that basis.

Finally, you assert the submitted information is excepted from disclosure under section 552.135 of the Government Code, which provides in relevant part the following:

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<sup>3</sup>In the future, if the district does obtain parental consent to submit unredacted 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.

(a) "Informer" means a student or 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 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). You assert the submitted information is excepted from disclosure in its entirety because it pertains to an allegation by a school employee of a violation of section 21.12 of the Penal Code. However, upon review, we find none of the submitted information identifies the individual who reported the alleged violation of law. Thus, we conclude you have failed to establish any of the submitted information is excepted from disclosure under section 552.135 of the Government Code. Therefore, the district must release the submitted information to the requestor.

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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ag

Ref: ID# 451677

Enc. Submitted documents

c: Requestor  
(w/o enclosures)