



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 28, 2013

Ms. Bonnie Hungerford
For Ysleta Independent School District
ScottHulse, P.C.
P.O. Box 99123
El Paso, Texas 79999-9123

OR2013-01568

Dear Ms. Hungerford:

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# 477148.

The Ysleta Independent School District (the "district"), which you represent, received a request for all of the records pertaining to the requestor during a certain period, including a specified investigation. You state the district has redacted student-identifying information from the information submitted to this office pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim the submitted information excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed 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." Gov't

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA 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. The DOE has determined 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 website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Code § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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). You assert portions of the submitted information are confidential under section 261.201 of the Family Code. *See id.* § 261.001 (defining “abuse” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of chapter 261). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, we find pages 141 to 150 consist of a report of alleged child abuse made to the Child Protective Services Division of the Texas Department of Family and Protective Services. Additionally, we find the information we have marked on page 124 and pages 166 through 169 reveals the identity of the person who made the report. Accordingly, this information is confidential under section 261.201(a)(1) of the Family Code and the district must withhold it under section 552.101 of the Government Code.

Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. We note section 552.117 also encompasses a personal cellular telephone or pager number, unless the cellular or pager service is paid for by a governmental body. *See Open Records Decision No. 506 at 5–7 (1988)* (statutory predecessor to section 552.117 not applicable to cellular telephone numbers

provided and paid for by governmental body and intended for official use). You have not informed us whether the individuals whose information we have marked timely elected confidentiality for their personal information. Therefore, if these individuals timely requested confidentiality for their personal information, the district must withhold the information we have marked in Exhibit 3 under section 552.117(a)(1) of the Government Code.² However, the district must withhold the marked cellular telephone number only if the cellular service is not paid for by a governmental body. If these individuals did not timely request confidentiality, or if a governmental body paid for the employee's cellular service, the district may not withhold the marked information under section 552.117(a)(1) of the Government Code.

Section 552.135 of the Government Code provides in part:

(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].

Gov't Code § 552.135(a)-(b). We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. Additionally, individuals who provide information in the course of an investigation, but do not make the initial report are not informants for purposes of section 552.135 of the Government Code. You contend pages 124, 125, and 166 through 170 reveal the identities of individuals who provided information to the district "during the course of the [d]istrict's investigation into allegations of student abuse[.]" Upon review, we find the district has failed to demonstrate how any of the information you seek to withhold reveals the identity of an individual who made an initial report of a possible violation to the district or the proper regulatory enforcement authority. Accordingly, the district may not withhold any of this information under section 552.135 of the Government Code.

In summary, the district must withhold pages 141 to 150, and the information we have marked on page 124 and pages 166 through 169, under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent the individuals whose personal information is at issue timely elected confidentiality, the district must withhold the information we have marked in Exhibit 3 under section 552.117(a)(1) of the

²Regardless of the applicability of section 552.117(a)(1), section 552.147 permits a governmental to withhold the social security number of a living person without requesting a decision from this office. See Gov't Code § 552.147(b).

Government Code, but the district must withhold the marked cellular telephone number only if the cellular service is not paid for by a governmental body. The remaining information must be released.³

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, 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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/ag

Ref: ID# 477148

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³We note the requestor has a right of access to some of the information being released. If the district receives another request for this same information from a different requestor, it must again seek a ruling from this office.