



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 1, 2013

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2013-11222

Dear Ms. McGowan:

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# 491742 (DISD ORR # 12012).

The Dallas Independent School District (the "district") received a request for a specified investigation by the district's Office of Professional Responsibility. You claim the submitted information is 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.

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"), section 1232g of title 20 of the United States Code, does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, state and local education authorities that receive a request for 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

¹A 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>.

C.F.R. § 99.3 (defining “personally identifiable information”). In this instance, you have submitted unredacted education records for our review. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of such records.² We will, however, address the applicability of the district’s claimed exceptions for the submitted information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

(a) [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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You contend the submitted information pertains to an investigation of alleged or suspected child abuse and falls within the scope of section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code). For the purposes of section 261.201, a “child” is defined as a person under eighteen years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes. *Id.* § 101.003(a). The submitted information reflects the victim at issue in the investigation was eighteen years old at the time of the incident at issue; thus, the submitted information pertains to an incident between two adults. As such, you have failed to demonstrate how the submitted information pertains to a report or investigation of alleged or suspected child abuse or neglect made for the purposes of chapter 261. Consequently, we determine section 261.201 is not applicable and the district may not withhold the submitted information under section 552.101 on this basis.

²In the future, if the district does not 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.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355 provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). Additionally, the courts have concluded that a written reprimand constitutes an evaluation for purposes of section 21.355 as it “reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364, 368 (Tex. App.—Austin 2006, no pet.). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. See Open Records Decision No. 643 (1996). In Open Records Decision No. 643, this office also concluded that a teacher for purposes of section 21.355 is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* at 4.

Upon review, we find the information we have marked consists of a written reprimand of a teacher that constitutes an evaluation for purposes of section 21.355. However, the submitted information does not reflect whether the individual held the requisite certificate under chapter 21 of the Education Code. Thus, we rule conditionally. If the individual at issue held the requisite certificate at the time of the evaluation at issue, the district must withhold the evaluation we have marked under section 552.101 in conjunction with section 21.355. If the individual did not hold the requisite certificate at the time of the evaluation at issue, this information is not confidential under section 21.355 and may not be withheld under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses the doctrine of common-law privacy, which protects information if it (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be established. *Id.* at 681-82. A compilation of an individual’s criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual’s privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one’s criminal history). Moreover, we find a compilation of a private citizen’s criminal history is generally not of legitimate concern to the public. This office has determined common-law privacy protects the identifying information of juvenile offenders. See Open Records Decision No. 384 (1983); *cf.* Fam. Code § 58.007.

Upon review, we find portions of the submitted information are generally highly intimate or embarrassing and not of legitimate public concern. Some of this information identifies an individual who may have been a juvenile offender. However, because the submitted

information does not reflect this individual's age, we must rule conditionally. Therefore, if the information we have marked for this individual pertains to an offender who was over the age of ten and under the age of seventeen at the time of the alleged conduct, the district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. However, if the information we have marked for this individual does not identify an offender who was over the age of ten and under the age of seventeen at the time of the alleged conduct, the district may not withhold this information on that basis. Regardless, the district must withhold the remaining information we have marked pertaining to other individuals under section 552.101 in conjunction with common-law privacy.

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[.]"³ Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The district must withhold the information we have marked under section 552.102(a).

Section 552.117(a)(1) of the Government Code excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, a governmental body must withhold information under section 552.117 on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the information we have marked must be withheld under section 552.117(a)(1). The district may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

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 possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

(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). 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. Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. We note this section does not protect the identity of an individual who planned, initiated, or participated in a possible violation of law. *See id.* § 552.135(c)(3). You state some of the remaining information identifies employees and students of the district who reported potential violations of criminal or civil laws. You state these individuals have not consented to public disclosure of their identities. Based on your representations and our review, we have marked information the district must withhold under section 552.135. However, we find none of the remaining information identifies an informer for the purposes of section 552.135; thus, none of the remaining information may be withheld on this basis.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). The e-mail address we have marked is not one of the types specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail address we have marked under section 552.137 unless the owner of the address affirmatively consents to its release.⁴

In summary, if the individual at issue held the requisite certificate at the time of the evaluation at issue, the district must withhold the teacher evaluation we have marked under

⁴We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. If the offender whose information we have marked was over the age of ten and under the age of seventeen at the time of the alleged conduct, the district must withhold the information we have marked pertaining to this individual under section 552.101 of the Government Code in conjunction with common-law privacy. The district must also withhold the following information: (1) the information we have marked pertaining to other individuals under section 552.101 of the Government Code in conjunction with common-law privacy; (2) the information we marked under section 552.102(a) of the Government Code; (3) the information we have marked under section 552.117(a)(1) of the Government Code if the employees whose information is at issue made timely elections; (4) the information we have marked under section 552.135 of the Government Code; and (5) the e-mail address we have marked under section 552.137 of the Government Code unless the owner of the address affirmatively consents to its release. The district must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/tch

Ref: ID# 491742

Enc. Submitted documents

c: Requestor
(w/o enclosures)