



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 19, 2014

Mr. Hector M. Benavides
Counsel for Northside Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2014-14600

Dear Mr. Benavides:

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# 534134.

The Northside Independent School District (the "district"), which you represent, received a request for information pertaining to a specified incident and information pertaining to a named employee. You state the district will redact information subject to section 552.117 of the Government Code pursuant to section 552.024(c) of the Government Code.¹ You further state the district will redact social security numbers pursuant to section 552.147(b) of the Government Code and driver's license numbers pursuant to Open Records Decision

¹Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2).

No. 684 (2009).² You state the district has redacted some information from the submitted documents pursuant to the Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code.³ You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 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 Code § 552.101. This section encompasses information protected by other statutes, such as chapter 411 of the Government Code, which makes confidential criminal history record information (“CHRI”) generated by the National Crime Information Center or by the Texas Crime Information Center. *See id.* § 411.083(a). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual laws with respect to the CHRI it generates. *See id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI obtained from DPS or

²Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including Texas driver’s license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general decision. However, on September 1, 2011, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsections 552.130(a)(1) and (a)(3) without the necessity of seeking a decision from the attorney general. Gov’t Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e). Thus, the statutory amendments to section 552.130 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.130(a)(1) and (a)(3) in accordance with section 552.130, not Open Records Decision No. 684. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. *Id.* § 552.147(b).

³The 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 or student 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. 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>.

any other criminal justice agency must be withheld under section 552.101 in conjunction with chapter 411, subchapter F of the Government Code. Upon review, we find you have not demonstrated how any portion of the submitted information consists of CHRI for purposes of chapter 411 of the Government Code, and the district may not withhold any of the submitted information under section 552.101 on that basis.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355 provides “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). 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, we determined a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

You assert some of the submitted information should be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Upon review, we find the information you seek to withhold consists of evaluations of a district employee acting as a teacher-aide. Section 21.355 does not apply to evaluations of educational aides. *See id.* at 5 (teacher interns, trainees, and educational aides are not “teachers” for purposes of section 21.355). Thus, the district may not withhold the information you seek to withhold under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in part, as follows:

(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 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). We note the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, we note the information we marked pertains to an investigation of alleged or suspected child abuse conducted by the district's police department, which is an agency authorized to conduct investigations under chapter 261. *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). As you do not indicate the district's police department has adopted a rule that governs the release of this type of information, we assume no such regulation exists. Accordingly, we find the information we marked is confidential under section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.⁴

Section 552.135 of the Government Code provides in relevant part the following:

(a) "Informer" means a student or a 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.

(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). 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). We note section 552.135 protects an informer's identity, but it does not generally encompass witness statements. You state the information at issue contains personally identifiable information of an informer who reported a possible violation of law. We conclude the district must withhold the identifying information of the employee who initially reported the possible violation, which we marked, under section 552.135 of the Government Code. However, we find the district has failed to demonstrate how any of the remaining information reveals the identity of an individual who made an initial report of a possible violation to the district or the proper regulatory enforcement authority and, thus, has not demonstrated the remaining information reveals the identity of an informer for the purposes of section 552.135. Therefore, the district may not withhold any portion of the remaining information under section 552.135 of the Government Code.

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code and the

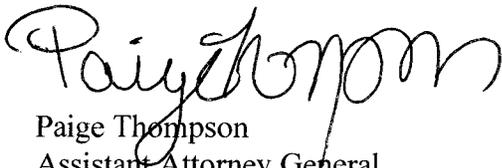
⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

information we marked under section 552.135 of the Government Code. 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,

A handwritten signature in black ink, appearing to read "Paige Thompson". The signature is written in a cursive, flowing style.

Paige Thompson
Assistant Attorney General
Open Records Division

PT/ds

Ref: ID# 534134

Enc. Submitted documents

c: Requestor
(w/o enclosures)