ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2014

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

OR2014-22964

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# 547291 (ORR# 13425).

The Dallas Independent School District (the "district") received a request for the campus and district files for a named individual. You state you will release some information. 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.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit state and local educational authorities 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 educational 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

[1]A copy of this letter may be found on the Office of the Attorney General's website at http://www.oag.state.tx.us/open/20060725usdoe.pdf.

disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). 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 information. Such determinations under FERPA must be made by the educational authority in possession of such records. We will, however, consider the applicability of the claimed exceptions to the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides, in part, the following:

> (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); *see id.* §§ 101.003(a) (defining "child" for purposes of chapter 261), 261.001 (1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). You claim the submitted information is confidential under section 261.201. 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). You state the information at issue was obtained from the Dallas Police Department ("DPD"), the Texas Department of Family and Protective Services ("DFPS"), or the district's police department (the "department"). You also state the district has on staff an employee who is shared with DFPS to receive and investigate child abuse claims. Upon review, we find the information we have marked was used or developed in an investigation under chapter 261. Accordingly, the district must withhold this information under section 552.101 in conjunction with subsection 261.201(a)(2). However, we find most of the remaining information was not obtained from DPD, DFPS, or the department, but instead relates to an administrative investigation by the district. We are unable to determine, however, whether the remaining Follow-Up Child Abuse Reporting Form (the "reporting form") was produced to DPD, DFPS, or the department. Accordingly, we rule in the alternative. To the extent the reporting form was produced to DPD, DFPS, or the department, we find this information consists of information used or developed in an

investigation of alleged or suspected child abuse under chapter 261 and must be withheld in its entirety under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(2) of the Family Code.

In the event the reporting form was not produced to DPD, DFPS, or the department, then this information does not consist of information used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code and may not be withheld on the basis of subsection 261.201(a)(2). In this instance, however, we find portions of the reporting form, which we have marked, consist of the identifying information of a person who reported alleged or suspected abuse or neglect to Child Protective Services. We find this information is within the scope of subsection 261.201(a)(1) of the Family Code. Additionally, we find portions of the other remaining information, which we have marked, are within the scope of section 261.201(a)(1). Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(1) of the Family Code.[2] However, none of the remaining information is confidential under section 261.201 of the Family Code and it may not withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 261.101 of the Family Code, which provides the identity of an individual making a report under chapter 261 is confidential. *See id.* § 261.101(d). As noted above, 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). Upon review, we find none of the remaining information consists of the identifying information of individuals who made a report under chapter 261 of the Family Code. Therefore, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 261.101 of the Family Code.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also found that common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 261.201. Upon review, we find some of the remaining information at issue identifies a juvenile victim of abuse or neglect. Accordingly, the district must withhold the identifying

---

[2]As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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

> (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. Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. You state the remaining information identifies students and employees who reported alleged violations of criminal and civil laws. However, we find you have not demonstrated how any of the remaining information identifies an informer who reported a possible violation of civil, criminal, or regulatory law for purposes of section 552.135. Therefore, the district may not withhold any of the remaining information on that basis.

In summary, the district must withhold the information we have marked under section 552.101 in conjunction with section 261.201(a)(2) of the Family Code. If the reporting form was produced to DPD, DFPS, or the department, the district must (1) withhold the reporting form in its entirety under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(2) of the Family Code; (2) withhold the remaining information we marked under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(1) of the Family Code; (3) withhold the remaining information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and; (4) release any remaining information. If the reporting form was not produced to DPD, DFPS, or the department, the district must (1) withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(1) of the Family Code; (2) withhold the remaining information we marked under section 552.101 of the Government Code in conjunction with common-law privacy and; (3) release any 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,

Rahat Huq
Assistant Attorney General
Open Records Division

RSH/dls

Ref: ID# 547291

Enc. Submitted documents

c: Requestor
(w/o enclosures)