



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 28, 2015

Mr. James M. Whitton
Counsel for the Grapevine-Colleyville Independent School District
Brackett and Ellis, P.C.
100 Main Street
Fort Worth, Texas 76102-3090

OR2015-10461

Dear Mr. Whitton:

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# 565105.

The Grapevine-Colleyville Independent School District (the "district"), which you represent, received a request for information regarding complaints made, or disciplinary action taken, against a specified teacher.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note you have redacted some of the submitted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. We note, however, the submitted information also contains unredacted education records. We note the United States Department of Education Family Policy Compliance Office has informed this office FERPA does not permit state and local

¹We note the district received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

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.² 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 disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your argument against disclosure of 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. Section 21.355 of the Education Code provides, in relevant part, "[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 administrator. *See* Open Records Decision No. 643 (1996). The Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because "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 (Tex. App.—Austin 2006, no pet.). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word "teacher" means a person who is required to, and does in fact, hold a teaching certificate under subchapter B of chapter 21 of the Education Code and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4.

We note the information in Exhibit E consists of a written reprimand of a teacher by the district. We understand the teacher at issue was engaged in the process of teaching at the time of the reprimand. However, the district does not indicate the teacher at issue held a teaching certificate or permit under chapter 21 of the Education Code at the time of the reprimand. *See* ORD 643 at 4. Accordingly, we must rule conditionally. To the extent the teacher at issue held a teaching certificate or permit under chapter 21 of the Education Code at the time of the reprimand, the district must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the teacher at issue did not hold a teaching certificate or permit under chapter 21 of

²A 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>.

the Education Code at the time of the reprimand, Exhibit E is not confidential under section 21.355 of the Education Code and may not be withheld on that basis under section 552.101 of the Government Code. In that case, as you have not claimed any other exceptions to disclosure, the district must release Exhibit E.

Section 552.101 of the Government Code 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 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 identifies a juvenile victim of abuse or neglect. Accordingly, the district must withhold the identifying information of the juvenile victim of abuse or neglect, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

We note portions of the remaining information are subject to section 552.117 of the Government Code.³ Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). Gov't Code §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, "[a] school district may not require an employee or former employee of the district to choose whether to allow public access to the employee's or former employee's social security number." *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. Whether 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(a)(1) on behalf of a current or former official or 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 individual whose information is at issue timely requested confidentiality pursuant to section 552.024,

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470.

the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district may not withhold this information under section 552.117(a)(1), if the individual whose information is at issue did not make a timely election to keep the information confidential.

In summary, to the extent the teacher at issue held a teaching certificate or permit under chapter 21 of the Education Code at the time of the reprimand, the district must withhold Exhibit E under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the identifying information of the juvenile victim of abuse or neglect, which we have marked, under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code, if the individual whose information is at issue timely requested confidentiality pursuant to section 552.024 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,



Rustam Abedinzadeh
Assistant Attorney General
Open Records Division

RA/dls

Ref: ID# 565105

Enc. Submitted documents

c: Requestor
(w/o enclosures)