



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 1, 2015

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

OR2015-10689

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# 565477 (ORR# 13864).

The Dallas Independent School District (the "district") received a request for (1) the personnel file for the requestor's client, (2) all documents concerning the requestor's client that were sent by the district to the Texas Education Agency or the State Board for Educator Certification, and (3) a copy of the district's Office of Professional Responsibility report. You state you will release some information to the requestor. 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 some of the submitted information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2014-19723 (2014). In Open Records Letter No. 2014-19723, we determined the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. Further, to the extent the remaining information was produced to the Dallas Police Department ("DPD"), the Texas Department of Family and Protective Services ("DFPS"), or the district's police department (the "department"), we determined the district must withhold this information in its entirety under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(2) of the Family Code. If the remaining information was not produced to DPD, DFPS, or the

department, we determined the district must (1) withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information we marked under section 552.117(a)(1) of the Government Code if the individuals whose information was at issue made timely elections under section 552.024 of the Government Code; and (3) release the remaining information. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Accordingly, the district must continue to rely on Open Records Letter No. 2014-19723 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 at 6-7 (2001) (discussing criteria for first type of previous determination). We will address the district's arguments against release of the submitted information that is not encompassed by Open Records Letter No. 2014-19723.

Next, 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 disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). The district has submitted unredacted education records for our review. 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 the district's arguments against disclosure of 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 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:

¹A 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>.

(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); *see id.* §§ 101.003(a) (defining “child” for purposes of chapter 261), 261.001 (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 submitted information was obtained from DPD, DFPS, or 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 a portion of the submitted information, which we have marked, was obtained from DFPS. Further, some of the remaining information, which we have marked, consists of reports of alleged or suspected child abuse made to DFPS. Therefore, the information we have marked is confidential under section 261.201(a) of the Family Code, and the district must withhold it under section 552.101 of the Government Code. The remaining information consists of internal records of an administrative investigation by the district. We are unable to determine, however, whether this remaining information was produced to DPD, DFPS, or the department. Accordingly, we rule in the alternative. To the extent the remaining information was produced to DPD, DFPS, or the department, we find the remaining 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 submitted information 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 based on subsection 261.201(a)(2).

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. Upon review, we find none of the remaining information contains the identifying information of an individual who made a report under chapter 261 of the Family Code. Thus, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with section 261.101(d) of the Family Code.

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 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 the information we have marked satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the 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 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].

(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). 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). Additionally, individuals who provide information in the course of an investigation, but do not report a possible violation of law are not informants for

purposes of section 552.135. You claim the remaining information contains personally identifiable information of informers who reported possible violations of criminal law. However, we find no portion of the remaining information contains the identity of an informer for section 552.135 purposes. Therefore, we conclude the district may not withhold any of the remaining information on the basis of section 552.135 of the Government Code.

We note some of the remaining information may be subject to section 552.117 of the Government Code.² Thus, to the extent the remaining information was not produced to DPD, DFPS, or the department, we will consider the applicability of this section to the remaining information at issue. Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of current or former employees or officials of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. *See Gov't Code* § 552.117(a)(1). 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, a school 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 a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *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 or official 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. Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 and the cellular telephone service is not paid for by a governmental body, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. However, if the individuals whose information is at issue did not make a timely election under section 552.024 or the cellular telephone service is paid for by a governmental body, the district may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.

In summary, the district must continue to rely on Open Records Letter No. 2014-19723 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the submitted information is not encompassed by the previous

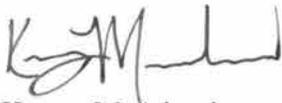
²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

ruling, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. To the extent the remaining information was produced to DPD, DFPS, or the department, the district must withhold this information in its entirety under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(2) of the Family Code. If the remaining information was not produced to DPD, DFPS, or the department, the district must (1) withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information we have marked under section 552.117(a)(1) of the Government Code if the individuals whose information is at issue made timely elections under section 552.024 and the cellular telephone service is not paid for by a governmental body; and (3) release the remaining information.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.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,



Kenny Moreland
Assistant Attorney General
Open Records Division

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³We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov't Code § 552.023; *see also* Open Records Decision No. 481 at 4 (1987). However, we note section 552.024(c) 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 to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). Thus, if the district receives another request for the submitted information from a different requestor, section 552.024(c) authorizes the district to withhold the requestor's personal information if the requestor has timely chosen not to allow access to the information.

Ref: ID# 565477

Enc. Submitted documents

c: Requestor
(w/o enclosures)