



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 23, 2015

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

OR2015-12417

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# 568161 (ORR# 13954).

The Dallas Independent School District (the "district") received a request for a named teacher's personnel file and seven categories of information relating to investigations of the named teacher. The district states it will release some of the requested information. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions the district claims 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

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>.

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”); *see also* Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). 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.

Next, we note some of the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2015-01463 (2015). In Open Records Letter No. 2015-01463, we determined, if the district determines all or portions of the requested information consist of “education records” that must be withheld under FERPA, then the district must dispose of any such information in accordance with FERPA, rather than the Act. Further, we determined 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 common-law privacy, but must 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. 2015-01463 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. 2015-01463.

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:

(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). The district states the submitted information was used or developed in investigations of alleged or suspected child abuse. 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). The district claims the information was obtained from the Dallas Police Department (“DPD”), the Department of Family and Protective Services (“DFPS”), or the district’s police department (the “department”). The district also states it 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 consists of reports of alleged or suspected abuse or neglect under section 261.201(a)(1) of the Family Code, the identifying information of a person who reported alleged or suspected abuse or neglect to Child Protective Services (“CPS”) under section 261.201(a)(1), or information that was used or developed in investigations of alleged or suspected child abuse or neglect under section 261.201(a)(2) of the Family Code. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). Accordingly, 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.²

We are unable to determine, however, whether the submitted “suspected child abuse reporting forms” (the “reporting forms”) were produced to DPD, DFPS, or the department. Thus, we must rule conditionally. To the extent the reporting forms were produced to DPD, DFPS, or the department, any such reporting forms consist of information used or developed in an investigation of alleged or suspected child abuse under chapter 261 that must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code.

To the extent the reporting forms were not produced to DPD, DFPS, or the department, then such reporting forms do 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 section 261.201(a)(2). In that 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 CPS and are within the scope

²As our ruling is dispositive, we do not address your other arguments to withhold this information.

of section 261.201(a)(1) of the Family Code. Therefore, to the extent the reporting forms were not produced to DPD, DFPS, or the department, the district must withhold the information we have marked in any such reporting forms under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code.³ However, in either instance, we find the remaining information was not obtained from DPD, DFPS, or the department, but instead relates to an administrative investigation by the district. Therefore, none of the remaining information is confidential under section 261.201 of the Family Code and none of it may be 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. 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 or 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 at issue identifies juvenile victims of abuse. Accordingly, the district must withhold the identifying information of juvenile victims of abuse, such as the child victims' names, identification numbers, home addresses and telephone numbers, and the names of the child victims' parents and siblings, under section 552.101 of the Government Code in conjunction with common-law privacy.⁴

Section 552.135 of the Government Code provides the following:

³As our ruling is dispositive, we do not address your other arguments to withhold this information.

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

(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.

(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. 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 the 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 the investigation, but do not report a violation of law are not informants for purposes of section 552.135 of the Government Code.

The district claims the remaining information reveals the identity of an informer who reported possible violations of criminal and civil laws. Upon review, we find the district must withhold the identifying information of the informer, as we have indicated, under section 552.135 of the Government Code. However, we find the district has not demonstrated the remaining information identifies an informer for the purposes of section 552.135. Therefore, we find the district may not withhold the remaining information under section 552.135 of the Government Code.

We note some of the remaining information may be subject to section 552.117(a)(1) of the Government Code, which 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).⁵ *See id.* §§ 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. We note 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). Whether

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision No. 481 (1987), 480 (1987), 470 (1987).

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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, if the employee whose cellular telephone number we have marked timely requested confidentiality under section 552.024 of the Government Code, and the cellular telephone service is not paid for by a governmental body, the district must withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the employee whose information is at issue did not timely request confidentiality under section 552.024, or the cellular telephone service is paid for by a governmental body, the district may not withhold the cellular telephone number we have marked under section 552.117(a)(1) of the Government Code.

In summary, to the extent the district determines the requested information consists of "education records" that must be withheld under FERPA, the district must dispose of any such information in accordance with FERPA, rather than the Act. The district must continue to rely on Open Records Letter No. 2015-01463 as a previous determination and withhold or release the identical information in accordance with that 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 reporting forms were produced to DPD, DFPS, or the department, the district must withhold them under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. To the extent the reporting forms were not produced to DPD, DFPS, or the department, the district must withhold the information we have marked in any such reporting forms under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code, but must release the remainder of any such reporting forms. The district must withhold the information that identifies a juvenile victim of abuse under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the identifying information of the informer, as we have indicated, under section 552.135 of the Government Code. If the employee whose cellular telephone number we have marked timely requested confidentiality under section 552.024 of the Government Code, and the cellular telephone service is not paid for by a governmental body, the district must withhold the cellular telephone number we have marked under section 552.117(a)(1) 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 "Lee Seidlits", written in a cursive style.

Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 568161

Enc. Submitted documents

c: Requestor
(w/o enclosures)