



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 12, 2015

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue, Box 74
Dallas, Texas 75204-5491

OR2015-16666

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# 575128 (ORR# 14153).

The Dallas Independent School District (the "district") received a request for the following information: 1) all performance records for a named teacher during a specified time period, 2) documents showing student test scores for the named teacher, 3) statistical documents showing the district's average test scores compared to the students of the named teacher, 4) documents showing the number of teachers proposed for nonrenewal at a specified school during a specified time period, 5) documents showing the number of teachers over a certain age who were proposed for nonrenewal during a specified time period, and 6) the named teacher's personnel file. You state the district 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 that 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 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”). You have submitted unredacted education records for our review. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted documents. Such determinations under FERPA must be made by the educational authority in possession of such records.² However, we will consider your arguments against disclosure of the submitted information.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses other statutes, such as section 21.355 of the Education Code, which provides that “[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). Additionally, a court has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355, as 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 concluded that a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *See* ORD 643. We further determined that “teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355.” *See id.* at 5.

Upon review, we find some of the submitted information, which we have marked, may be subject to section 21.355 of the Education Code. It appears the individual at issue was acting as a teacher at the time the evaluations were prepared. However, we are unable to determine if the individual being evaluated in the information at issue held the appropriate certification at the time of the evaluations. Thus, to the extent the individual at issue held the appropriate certification under chapter 21 of the Education Code at the time of the evaluations at issue, the district must withhold the information we have marked under section 552.101 of the

¹A 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>.

²In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

Government Code in conjunction with section 21.355 of the Education Code. To the extent the individual at issue did not hold the appropriate certification, the district may not withhold the information we have marked 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, 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 (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 contend 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 contend the district has on staff an employee who is shared with DFPS to receive and investigate child abuse claims. Upon review, we find some of the submitted 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 submitted reporting form was produced to DPD, DFPS, or the department. Thus, if the reporting form was produced to DPD, DFPS, or the department, then this information, which we have marked, consists of information used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 and must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. If 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 or neglect under chapter 261 of the Family Code and may not be withheld on the basis of

section 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 and are within the scope of section 261.201(a)(1) of the Family Code. Therefore, if the reporting form was not produced to DPD, DFPS, or the department, then the district must withhold the information we have marked in the reporting form under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code.

In either instance, we note the remaining administrative investigation information also contains the identifying information of a person who reported alleged or suspected child abuse or neglect to Child Protective Services. Thus, the district must withhold the information we have marked within the remaining administrative investigation information under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. However, 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 (listing agencies that may conduct child abuse investigations). Upon review, we find none of the remaining information at issue consists of the identifying information of an individual who made a report under chapter 261 of the Family Code. Therefore, the district may not withhold any of the remaining information at issue under section 552.101 of the Government Code in conjunction with section 261.101 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 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 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. Further, individuals who provide information in the course of an investigation, but do not report a violation of law are not informers for purposes of section 552.135. You state portions of the remaining information at issue identify students, parents, and employees who reported alleged violations of criminal and civil laws. However, we conclude the district has failed to demonstrate how any of the remaining information at issue reveals the identity of an informer for purposes of section 552.135. Therefore, the district may not withhold the remaining information on that ground.

In summary, if the individual at issue held the appropriate certification under chapter 21 of the Education Code at the time the evaluations were prepared, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. If the reporting form we marked was produced to DPD, DFPS, or the department, the district must 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. If the reporting form was not produced to DPD, DFPS, or the department, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. The district must also withhold the information we have marked within the remaining administrative investigation information under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. 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 "Kristi L. Godden". The signature is fluid and cursive, with the first name "Kristi" and last name "Godden" clearly distinguishable.

Kristi L. Godden
Assistant Attorney General
Open Records Division

KLK/cz

Ref: ID# 575128

Enc. Submitted documents

c: Requestor
(w/o enclosures)