



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 15, 2016

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

OR2016-13549

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# 614297 (DISD ORR Nos. 15070 and 15122).

The Dallas Independent School District (the "district") received two requests from different requestors. The first requestor seeks four categories of information pertaining to a named individual, including (1) the personnel file; (2) all documents sent to the Texas Education Agency or State Board for Educator Certification; (3) all investigation documents during a specified time period; and (4) all Office of Professional Responsibility reports. The second requestor seeks seven categories of information pertaining to the named individual, including (1) all evaluations during a specified time period; (2) the personnel file; (3) the current employment contract; (4) all grievances filed against the named individual; (5) all grievances filed by the named individual; (6) all related documentation to categories four and five; and (7) all investigation documents during a specified time period. You state you will release some information to the requestors. 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 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.

We note the submitted information may have been the subject of a previous request for information, the result of which this office issued Open Records Letter No. 2016-09187 (2016). In that ruling, we determined, (1) if the reporting forms were produced to the Dallas Police Department (the “DPD”), the Texas Department of Family and Protective Services (the “DFPS”), or the district’s police department (the “department”), then the district must withhold such information in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code; (2) if the reporting forms were not produced to the DPD, the DFPS, or the department, the district must withhold the information we have marked within the reporting forms under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code; (3) the district must withhold the identifying information of the juvenile victims of abuse or neglect under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the district must release the remaining information. We have no indication the law, facts, and circumstances on which this ruling was based have changed. Accordingly, with regard to the information in the present request that is identical to information previously ruled upon by this office, the district must continue to rely on Open Records Letter No. 2016-09187 as a previous determination and withhold or release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the information in the present request was not at issue in this previous ruling, we will address the district’s arguments against disclosure.

¹A copy of this letter may be found on the Office of the Attorney General’s website at <http://www.texasattorneygeneral.gov/open/20060725usdoe.pdf>.

Section 552.101 of the Government Code exempts from public 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 261.201 of the Family Code provides, in part, as follows:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, 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 also id.* §§ 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), 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 DPD, the DFPS, or the department. You also state the district has an employee on staff who is shared with the DFPS to receive and investigate child abuse claims. Upon review, we find portions of the submitted information were not obtained from the DPD, the DFPS, or the department, but instead relate to administrative investigations by the district. However, we are unable to determine whether the submitted Follow-Up Child Abuse Reporting Forms (the “reporting forms”) were produced to the DPD, the DFPS, or the department. Accordingly, we must rule conditionally. If the reporting forms were produced to the DPD, the DFPS, or the department, we find this information consists of information used or developed in investigations 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 section 261.201(a)(2) of the Family Code. In the event the reporting forms were not produced to the DPD, the DFPS, or the department, 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 section 261.201(a)(2). In this instance, however, we find portions of the reporting forms, which we have marked, consist of the identifying information of individuals who reported alleged or suspected abuse or neglect to Child Protective Services. We find this information is within the scope of section 261.201(a)(1) of the Family Code. Therefore, 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.² 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. Upon review, we find none of the remaining information identifies an individual 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 Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Upon review, we find a portion of the submitted information, which we have marked, constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a

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

physician. Accordingly, the district must withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA.³

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.⁴

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). 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). We note section 552.135 protects an informer's identity, but it does not generally encompass protection for witnesses or witness statements. You state some of the remaining information identifies students and employees who reported alleged violations of criminal and civil laws. Upon review, we find the district has failed to demonstrate any of the remaining information reveals the identity of an informer for the purposes of section 552.135 of the Government Code. Therefore, the district may not withhold the remaining information on that ground.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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

In summary, to the extent the information in the present request is identical to information previously ruled upon by this office, the district must continue to rely on Open Records Letter No. 2016-09187 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the information in the present request was not at issue in this previous ruling, the district must: (1) withhold the reporting forms in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code if the reporting forms were produced to the DPD, the DFPS, or the department; however, if the reporting forms were not produced to the DPD, the DFPS, or the department, the district must withhold the information we have marked within the reporting forms under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code, (2) withhold the marked medical records under section 552.101 of the Government Code in conjunction with the MPA, and (3) withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The remaining information must be released.⁵

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,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/dls

⁵We note the requestors have a right of access to some of the information being released pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, if the district receives another request for the same information from a different requestor, the district must again seek a decision from this office.

Ref: ID# 614297

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)