



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 19, 2016

Ms. Ann-Marie Sheely
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR2016-21100

Dear Ms. Sheely:

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# 626876.

The Travis County Juvenile Probation Department (the "department") received three requests for the personnel files of three named employees of the department. The department informs us it has released most of the requested information. The department states it will redact some information subject to section 552.117(a)(1) of the Government Code pursuant to section 552.024 of the Government Code.¹ The department states it will redact motor vehicle record information under section 552.130(c) of the Government Code.² The department claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.114, and 552.137 of the Government Code. We have

¹Section 552.024(c)(2) 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 or official to whom the information pertains timely chooses not to allow public access to the information. *See* Gov't Code § 552.024(c)(2). If a governmental body redacts such information, it must notify the requestor in accordance with subsections 552.024(c-1) and (c-2). *See id.* § 552.024(c-1)-(c-2).

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in subsection 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

considered the exceptions the department claims and reviewed the submitted representative sample of information.³

Initially, the department asserts some of the submitted information is excepted from disclosure under the Family Education Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office that FERPA 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.⁴ Consequently, education records that are responsive to a request for information under the Act should not be submitted 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 department has submitted unredacted education records for our review. We note, and the department acknowledges, the department is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an “educational agency” within the meaning of FERPA). However, FERPA contains provisions that govern access to education records that an educational agency or institution transfers to a third party. The department states it obtained the information at issue directly from an educational institution. Because our office is prohibited from reviewing these education records to determine the applicability of FERPA, we will not address the applicability of FERPA to them. Such determinations under FERPA must be made by the educational authorities from which the education records were obtained. Thus, the department must contact the educational institution from which the information at issue was obtained, as well as the DOE, regarding the applicability of FERPA to the information at issue. Likewise, we do not address the department’s argument under section 552.114 of the Government Code. *See* Gov’t Code §§ 552.026 (incorporating FERPA into Act), .114 (excepting from disclosure “student records”); Open Records Decision No. 539 (1990) (determining same analysis applies under section 552.114 of Government Code and FERPA). To the extent the information at issue is not governed by FERPA, we will address the department’s arguments against its disclosure.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts*

³We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

⁴A copy of this letter may be found on the Office of the Attorney General’s website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

v. Attorney Gen. of Tex., 354 S.W.3d 336 (Tex. 2010). Accordingly, the department must withhold the dates of birth it has marked under section 552.102(a) of the Government Code.⁵

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov’t Code* § 552.137(a)-(c). The e-mail addresses at issue are not excluded by subsection (c). Therefore, the department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the department must contact the educational institution from which the education records at issue were obtained, as well as the DOE, regarding the applicability of FERPA to the information at issue. The department must withhold the dates of birth it has marked under section 552.102(a) of the Government Code. The department must withhold the personal e-mail addresses we have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The remaining information must be released.

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,



Rahat Huq
Assistant Attorney General
Open Records Division

RSH/som

⁵As our ruling is dispositive, we need not address the department’s remaining argument against disclosure of this information.

Ref: ID# 626876

Enc. Submitted documents

c: Requestor
(w/o enclosures)