



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 21, 2003

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

OR2003-1951

Dear Ms. McGowan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178213.

The Dallas Independent School District (the "district") received a request for any investigation files against three named Safety and Security Department employees as well as the employee files and any investigation files of two other named employees. We understand you to represent that the Safety and Security Department is the district's law enforcement unit. You indicate that you will release all responsive information except for a single investigation, which you claim is excepted from disclosure under sections 552.101 and 552.135 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

You assert that the submitted information is confidential under section 261.201 of the Family Code. Section 261.201, which is incorporated into the Public Information Act (the "Act") by section 552.101 of the Government Code,² provides in part as follows:

(a) The 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:

¹Although you raise section 552.131 of the Government Code as a possible exception to disclosure, we note that the legislature renumbered this section effective September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2812, § 21.001(54) (codified at Gov't Code § 552.135). Because the revision was non-substantive, we address your arguments under section 552.135 of the Government Code.

²Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statutes outside of the Act.

(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 in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We note that a school district is not an agency authorized to conduct a chapter 261 investigation. *See* Fam. Code §§ 261.301, .406. However, as a law enforcement agency, a school district's law enforcement unit is authorized to conduct criminal investigations under chapter 261. *See* Fam. Code §§ 261.301, .3019, .406 (providing that law enforcement agency is authorized to conduct chapter 261 investigation).

In this instance, the submitted information consists of an administrative investigation of a department employee that was conducted by the department as his employer. We find that the administrative investigation is not itself an investigation conducted under chapter 261. Furthermore, you have not informed us that the submitted information has been sent to an entity that is conducting an investigation under chapter 261. We therefore conclude that, to the extent the submitted information has been forwarded to an agency conducting an investigation under chapter 261, it constitutes "working papers used or developed" in an investigation under that chapter and is therefore confidential and must be withheld. However, if the information was not forwarded to an entity conducting such an investigation, it is not confidential under chapter 261 and may not be withheld on that basis.

Because of the conditional nature of our ruling under section 552.101, we must also address your arguments concerning section 552.135. You contend that certain individuals portrayed in the submitted information are informers within the meaning of section 552.135. This section provides:

(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].

(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.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

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 that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You assert, and the submitted information reflects, that an employee or former employee of the district furnished a report of another person's possible violation of criminal, civil, or regulatory law to the district. Furthermore, you inform us that the informer has not consented to the release of identifying information. We therefore conclude that the identity of the individual who made the initial report is excepted under section 552.135. We have marked the information that you may withhold pursuant to section 552.135.

Next, note that the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.³ FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See id.* § 1232g(b)(1). Section 552.114 of the Government Code provides a similar prohibition against public release of student records from an educational institution funded wholly or in part by state funds. "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by

³FERPA is incorporated into the Public Information Act by section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

a person acting for such agency or institution. 20 U.S.C. § 1232g(a)(4)(A).⁴ This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990); *see* Gov't Code § 552.026 (providing that Public Information Act only requires release of information from education records in conformity with FERPA). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). This includes information that directly identifies a student, as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). We have marked the information that must be withheld in accordance with FERPA and section 552.101.

We also note that some of the remaining information may be excepted under section 552.117 of the Government Code. Section 552.117(1) excepts from public disclosure the present and former home addresses and telephone numbers, 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. Section 552.117(2) excepts the same information regarding a security officer commissioned under section 51.212 of the Education Code, regardless of whether the officer made an election under section 552.024 of the Government Code.

Under section 552.117(2), the district must withhold the listed information if the employee at issue was a security officer commissioned under section 51.212 of the Education Code at the time the district received this request. Even if this individual was not a commissioned security officer when this request was received, the district must withhold the listed information if he elected, prior to the date of this request, to keep such information confidential. *See* Open Records Decision No. 530 at 5 (1989) (whether particular information is protected by predecessor to section 552.117(1) must be determined at time request for it is made). We have marked the information that must be withheld if section 552.117 applies.

We note that, even if not excepted under section 552.117, social security numbers may nevertheless be excepted from disclosure under section 552.101 in conjunction with federal law. The 1990 amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We

⁴FERPA specifically excludes from the definition of "education records" documents maintained by a law enforcement unit of the educational agency or institution that were created for the purpose of law enforcement. *See* 20 U.S.C. § 1232g(a)(3)(B)(ii). However, as noted above, the submitted records were created for purposes of conducting an administrative investigation of an employee and thus are not subject to the law enforcement exclusion under FERPA. *See* 34 C.F.R. § 99.8(b)(2)(ii) (records of law enforcement unit does not mean those created by unit exclusively for non-law enforcement purpose, such as disciplinary action).

have no basis for concluding that the social security numbers are confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, the district should ensure that it did not obtain or maintain them pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we note that the submitted information includes a copy of a Texas driver's license. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(1). Therefore, under section 552.130, the district must withhold the information we have marked.

In summary, to the extent the submitted information was sent to an agency conducting an investigation under chapter 261, it constitutes "working papers used or developed" in an investigation under that chapter and is therefore confidential and must be withheld. If the information was not sent to an entity conducting such an investigation, it is not confidential under chapter 261 and may not be withheld on that basis. If the information is not confidential under section 261.201, the district 1) may withhold the information we have marked as being excepted under section 552.135; 2) must withhold the information that we have marked as being excepted under FERPA; 3) must withhold the information we have marked as being excepted under section 552.117 if the individual at issue was a commissioned security officer at the time this request was received or made an election under section 552.024 prior to the date this request was received; 4) must withhold the employee's social security number if it was obtained or is maintained under a law enacted on or after October 1, 1990; 5) must withhold the marked Texas driver's license under section 552.130; and 6) must release all other information.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 178213

Enc. Submitted documents

c: Ms. Paulette A. Johnson
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(w/o enclosures)