



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 7, 2007

Mr. David M. Swope  
Assistant County Attorney  
Harris County Attorney's Office  
1019 Congress, 15<sup>th</sup> Floor  
Houston, Texas 77002

OR2007-07135

Dear Mr. Swope:

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#279240.

The Harris County Juvenile Probation Department (the "department") received a request for "any audits, citations, inspection results or reports, either internal or by an outside department or agency, concerning or relating to" eight specific categories of information involving the department. You state that, upon payment, you will release some of the responsive information to the requestor. However, you claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup> We have also considered comments submitted by the requestor's attorney. *See Gov't Code*

---

<sup>1</sup>We note that section 552.023, which provides a special right of access to confidential information in certain circumstances, is not an exception to disclosure. Accordingly, we do not address your claim that the submitted information is excepted from disclosure under this provision.

<sup>2</sup>We assume that 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 that those records contain substantially different types of information than that submitted to this office.

§ 552.304 (interested party may submit comments stating why information should or should not be released).

First, you claim that some of the submitted information consists of education records that are protected by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(a). Recently, the United States Department of Education Family Policy Compliance Office (the “DOE”) informed this office that the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(a) 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.<sup>3</sup> 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, *among other things*, education records that you contend are protected by FERPA for our review. Because our office is prohibited from reviewing education records to determine whether the appropriate markings were made, we will not address FERPA with respect to the information at issue. We will, however, address the applicability of the remaining claimed exceptions to the submitted information.

Section 552.101 of the Government Code excepts 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 552.101 of the Government Code encompasses section 261.201(a) of the Family Code, which provides 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:

- (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.

---

<sup>3</sup>A copy of this letter may be found on the attorney general’s website, *available at* [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

Fam. Code § 261.201(a). Upon review, we find that some of the submitted information consists of files, reports, records, communications, and working papers used or developed in investigations under chapter 261 of the Family Code. *See* Fam. Code §§ 261.103(a)(3)-(4) (suspected child abuse or neglect shall be reported to state agency that operates, licenses, certifies, or registers facility in which alleged abuse or neglect occurred or to agency designated by court to be responsible for protection of children), .301(a)-(b) (designated agency or responsible state agency shall investigate report of abuse or neglect), .405 (alleged abuse or neglect in juvenile justice program or facility shall be reported to and investigated by Texas Juvenile Probation Commission). You do not inform this office that the department has adopted a rule that governs the release of this type of information, and we thus presume that no such rule exists. Accordingly, we conclude that Exhibit B1 is confidential under section 261.201 of the Family Code, and must be withheld under section 552.101 of the Government Code. However, we determine that no portion of the remaining information constitutes information made confidential under section 261.201 of the Family Code. Thus, the remaining information may not be withheld under section 552.101 of the Government Code on this basis.

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. For purposes of section 58.007, “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See* Fam. Code § 51.02(2). Section 58.007(c) reads as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

*Id.* § 58.007. Upon review of your arguments and the information at issue, we find that no portion of the remaining information constitutes a juvenile law enforcement record for purposes of section 58.007. Accordingly, no portion of the remaining information may be

withheld under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code encompasses the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. See *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Additionally, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. See Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). Common-law privacy also protects the identifying information of juvenile offenders. See Open Records Decision No. 394 (1983); cf. Fam. Code § 58.007. Upon review, we find that the remaining information contains information that is considered highly intimate or embarrassing and is not of legitimate concern to the public. Accordingly, the department must withhold the identifying information of juvenile offenders under section 552.101 of the Government Code in conjunction with common-law privacy.

We note that the submitted information contains a private e-mail address.<sup>4</sup> Section 552.137 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). Gov’t Code § 552.137(a)-(c). We note that section 552.137 does not apply to a government employee’s work e-mail address because such an address is not that of the employee as a “member of the public” but is instead the address of the individual as a government employee. The e-mail address we have marked is not of a type specifically excluded by section 552.137(c) of the Government Code. Therefore, the department must withhold the marked e-mail address in accordance with section 552.137 unless the department receives consent for its release.

In summary, this ruling does not address the applicability of FERPA to the submitted information. Should the department determine that all or portions of the submitted information consists of “education records” that must be withheld under FERPA, the department must dispose of that information in accordance with FERPA, rather than the Act.

---

<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

The department must withhold the following: (1) Exhibit B1 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (2) the identifying information of juvenile offenders under section 552.101 of the Government Code in conjunction with common-law privacy; and (3) the email address we have marked under section 552.137 of the Government Code. The remaining information must be released to the requestor.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 Office of the Attorney General 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. 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,

A handwritten signature in black ink, appearing to read "Holly R. Davis", with a long horizontal flourish extending to the right.

Holly R. Davis  
Assistant Attorney General  
Open Records Division

HRD/eeg

Ref: ID# 279240

Enc. Submitted documents

c: Mr. Steve McVicker  
Houston Chronicle  
801 Texas Avenue  
Houston, Texas 77002  
(w/o enclosures)