



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 25, 2008

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

OR2008-10131

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# 315712.

The Dallas Independent School District (the "district") received a request for a copy of the results of a specified Office of Professional Responsibility report and any complaints made pertaining to a named individual. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information you have submitted.

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. § 1232g(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>1</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

---

<sup>1</sup>A 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>.

information”). You have submitted, among other things, 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. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>2</sup> We will, however, address the applicability of the claimed exception to the submitted information.

We note that portions of the submitted information, which we have marked, are not responsive to the instant request because they were created after the date the request was received. The district need not release nonresponsive information in response to this request and this ruling will not address that information.

Section 552.101 of the Government Code exempts from 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(a) of the Family Code provides as follows:

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, 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.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We note that the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* §§ 261.301, .406. However, you state that a portion of the submitted information consists of documents that were provided to the district by the Dallas Police Department (the “department”), Texas Department of Family and Protective Services (“DFPS”), and the district’s police department. Pursuant to section 552.303 of the Government Code, we notified the district by letter that we needed additional information explaining which of the submitted documents were provided by an

---

<sup>2</sup>In 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.

authorized agency under chapter 261 of the Family Code and whether this information was used by that agency in its investigation under section 261.201. *See* Gov't Code § 552.303(c) (attorney general may give written notice to governmental body that additional information is necessary to render a decision). In response to this request, you state that the information at issue was used by the district's police department in its investigation of child abuse. You have not indicated that the district's police department has adopted a rule that governs the release of this type of information. Accordingly, based on your representations, we find that the district may withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.<sup>3</sup>

Section 552.101 also encompasses section 21.355 of the Education Code. You assert that the remaining information contains documents that are excepted from disclosure under section 552.101 in conjunction with section 21.355, which provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. 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). We have determined that the word "administrator" in section 21.355 means a person who is required to, and does in fact, hold an administrator's certificate under chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

The remaining information consists of complaints made against the named administrator. These documents do not constitute evaluations of the employee's performance as an administrator. Thus, you may not withhold the information at issue under section 552.101 in conjunction with section 21.355 of the Education Code.

We note that some of the remaining information may be subject to sections 552.117 and 552.137 of the Government Code.<sup>4</sup> Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses, 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 of the Government Code. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected under section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, pursuant to section 552.117(a)(1), if the employees at issue made timely elections to keep their information confidential, then the district must withhold the employees' personal information we have marked. If the employees at issue did not make timely elections, then

---

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

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

the district may not withhold the personal information we have marked under section 552.117(a)(1).

Section 552.137 provides that "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act]," unless the owner of the e-mail address has affirmatively consented to its public disclosure. Gov't Code § 552.137(a)-(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c): Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees. We have marked e-mail addresses in the submitted information that the district must withhold under section 552.137 of the Government Code, unless the owners of the e-mail addresses have affirmatively consented to their public disclosure.

In summary, the district must withhold the information we have marked under section 552.101 in conjunction with section 261.201 of the Family Code. The district must withhold the personal information we have marked under section 552.117(a)(1), if the employees at issue timely elected confidentiality. The district must withhold the e-mail addresses we have marked under section 552.137, unless the owners have affirmatively consented to their release. The remaining information must be released.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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,

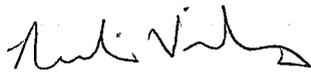
toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge 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,



Melanie J. Villars  
Assistant Attorney General  
Open Records Division

MJV/jh

Ref: ID# 315712

Enc. Submitted documents

c: Mr. Joel Rothermel  
1111 Cascade Avenue  
Dallas, Texas 75224  
(w/o enclosures)