



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 28, 2010

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

OR2010-07825

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# 380995.

The Dallas Independent School District (the "district") received a request for all final reports of investigations conducted by the district's Office of Professional Responsibility from March 25, 2009, to the present. You state the district will release some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.108, 552.116, 552.117, 552.130, 552.135, 552.136, and 552.137 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, 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

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<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>.

“personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). The submitted information includes unredacted education records. Because our office is prohibited from reviewing these 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 such records.<sup>2</sup> We will, however, address the applicability of the claimed exceptions to the submitted information.

Next, we note that a portion of the submitted information appears to be the subject of previous rulings by this office. In Open Records Letter Nos. 2009-17085 (2009) and 2010-01572 (2010) this office ruled that portions of the information at issue must be withheld under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. In Open Records Letter No. 2010-05011 (2010), we ruled that portions of the information at issue must be withheld under section 552.101 and 552.117 of the Government Code. As we have no indication that the law, facts, and circumstances on which these prior rulings were based have changed, the district must continue to rely on these rulings as a previous determination and withhold the submitted information we previously ruled on in accordance with Open Records Letter Nos. 2009-17085, 2010-01572 and 2010-05011. *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). However, to the extent the information in the current request is not encompassed by those previous decisions, we will address your arguments for the remaining information.

A portion of the submitted information does not consist of a final investigative report by the Office of Professional Responsibility. This information, which we have marked, is not responsive. The district does not need to release non-responsive information in response to this request and this ruling will not address that information.

The submitted information consists of completed investigations, which are subject to section 552.022(a)(1) of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of “a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108.” Gov’t Code § 552.022(a)(1). Although you raise sections 552.107 and 552.116 of the Government Code for portions of the submitted information, these sections are discretionary exceptions to disclosure that protect the governmental body’s interests and may be waived. *See* Open Records Decision Nos. 676 at 6 (2002) (section 552.107 is not other law for purposes of section 552.022), 665 at 2 n.5 (2000) (discretionary exceptions generally). As such,

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<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.

sections 552.107 and 552.116 are not other law that make information confidential for the purposes of section 552.022. Therefore, the district may not withhold the information at issue under these exceptions. However, the Texas Supreme Court has held that the Texas Rules of Evidence are "other law" that make information expressly confidential for the purposes of section 552.022. *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). We will therefore consider your arguments under Texas Rule of Evidence 503 for the submitted information, as well as your arguments under section 552.108 and the mandatory exceptions to disclosure that you claim.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides in part:

(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.

*Id.* § 261.201(a); *see also id.* § 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Family Code chapter 261), § 101.003(a) (defining "child" for purposes of section 261.201 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"). We note the district is not an agency authorized to conduct a chapter 261 investigation. However, you state the district has on staff an employee who is shared with the Texas Department of Family and Protective Services ("DFPS") to receive and investigate child abuse claims. Furthermore, you state the information at issue was obtained by the Dallas Police Department, DFPS, or district police officers, who are commissioned peace officers with the authority to investigate child abuse claims, to investigate such claims. Thus, we understand that the information at issue was used by these investigating agencies in a child abuse investigation. Based upon your representations and our review, we find that the information we have marked consists of files, reports, records, and working papers used or developed in an investigation of child abuse, and therefore, the marked information is within the scope of section 261.201 of the Family Code. Accordingly, the district must 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> The district has failed to demonstrate, however, that any of the remaining information is confidential pursuant to section 261.201; therefore, none of the remaining information may be withheld under section 552.101 on that basis.

You also raise section 552.101 in conjunction with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 42 U.S.C. §§ 1320d-1320d-8, for portions of the submitted information. At the direction of Congress, the Secretary of Health and Human Services ("HHS") promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. pts. 160, 164 ("Privacy Rule"); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. 45 C.F.R. § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision Number 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law. *See* 45 C.F.R. § 164.512(a)(1). We further noted the Act "is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public." *See* Open Records Decision No. 681 at 8 (2004); *see also* Gov't Code §§ 552.002, .003, .021. We, therefore, held that the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Because the Privacy Rule does not make information that is subject to disclosure under the Act confidential, the district may not withhold any portion of the submitted information on this basis.

You also raise section 552.101 in conjunction with the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. Section 159.002 of the MPA provides in 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

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

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.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). Upon review, we find none of the remaining information contains medical records subject to the MPA; thus none of the remaining information may be withheld on that basis.

Section 552.101 of the Government Code 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(c). Section 58.007 provides in relevant part:

(c) 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 Subchapters B, D, and E.

Fam. Code § 58.007(c). In order for section 58.007(c) to apply, a child must be identified in the information at issue as a suspect or offender. *See id.* § 51.02(2) (defining "child" as a person who is ten years of age or older and under seventeen years of age at the time of the conduct). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party. Upon review, we find none of the remaining information identifies a juvenile suspect or offender engaged in delinquent conduct or conduct indicating a need for supervision for purposes of this section. Therefore, none of the remaining information may be withheld under section 552.101 on this basis.

Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. *See Gov't Code*

§ 411.082(2). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety ("DPS") maintains, except that DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. A school district may obtain CHRI from DPS as authorized by section 411.097 and subchapter C of chapter 22 of the Education Code; however, a school district may not release CHRI except as provided by section 411.097(d). *See id.* §§ 411.097(d); *see also id.* 411.0845(d) (establishing an electronic criminal history clearinghouse for CHRI at DPS and providing for confidentiality of such information), Educ. Code § 22.083(c)(1) (authorizing school district to obtain from any law enforcement or criminal justice agency all CHRI relating to school district employee). Section 411.087 authorizes a school district to obtain CHRI from the Federal Bureau of Investigation (the "FBI") or any other criminal justice agency in this state. Gov't Code § 411.087. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* ORD 565. Furthermore, any CHRI the district obtained from DPS or any other criminal justice agency in this state must be withheld under section 552.101 of the Government Code in conjunction with section 411.097(d) of the Government Code. *See* Educ. Code § 22.083(c)(1). You represent that portions of the submitted information contain CHRI that is confidential under chapter 411. We agree that a portion of the remaining information, which we have marked, constitutes CHRI that is confidential under chapter 411 and must be withheld under section 552.101.

Section 21.355 of the Education Code provides "a document evaluating the performance of a teacher or administrator is confidential." 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). In that decision, we concluded a "teacher" for purposes of section 21.355 means a person who (1) is required to and does in fact hold a certificate or permit required under chapter 21 of the Education Code and (2) is teaching at the time of his or her evaluation. *Id.* We further determined that "teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355." *See id.* at 5. You contend a portion of the remaining information is confidential under section 21.355 of the Education Code. You assert the information at issue evaluates the performance of teachers who hold the appropriate certificates for the purpose of section 21.355. Thus, to the extent the employees in question were serving as teachers at the time of the evaluations, we find that the information we have marked is confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code. However, you have not demonstrated that any of the remaining information at issue evaluates the performance of a teacher for purposes of section 21.355; thus none of the remaining information at issue may be withheld on that basis.

You claim portions of the remaining information are excepted under section 552.101 of the Government Code in conjunction with common-law privacy and section 552.102 of the Government Code. Common-law privacy protects information that (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). To demonstrate the applicability of common-law privacy, both prongs of this test must be demonstrated. *See id.* at 681-82. Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy[.]" *Id.* § 552.102(a). Section 552.102 is applicable to information that relates to public officials and employees. *See Open Records Decision No. 327 at 2 (1982)* (anything relating to employee's employment and its terms constitutes information relevant to person's employment relationship and is part of employee's personnel file). The privacy analysis under section 552.102(a) is the same as the common-law privacy standard under section 552.101. *See Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.) (addressing statutory predecessor). We will therefore consider the applicability of common-law privacy under section 552.101 together with your claim regarding section 552.102.

The types 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. *See Indus. Found.* 540 SW2d. 668 at 683. This office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure pursuant to 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). Furthermore, this office has found that personal financial information not relating to a financial transaction between an individual and a governmental body is also excepted from required public disclosure under common-law privacy. *See Open Records Decision Nos. 600 (1992)* (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history). We note, however, that generally the public has a legitimate interest in information that relates to public employment and public employees. *See Open Records Decisions Nos. 562 at 10 (1990)* (personnel file information does not involve most intimate aspects of human affairs, but in fact touches on matters of legitimate public concern); 542 (1990); 470 at 4 (public has legitimate interest in job qualifications and performance of public employees); 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow).

The remaining information includes sexual harassment investigations. In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* We note that supervisors are not witnesses for purposes of *Ellen*, and thus supervisors' identities may generally not be withheld under section 552.101 and common-law privacy.

You state, and we agree, that the information at issue includes adequate summaries of the investigations into alleged sexual harassment, as well as statements by the persons accused of sexual harassment. The summaries and the statements are not confidential; however, information within these documents identifying the alleged victims and witnesses, which we have marked, is confidential under common-law privacy.<sup>4</sup> Furthermore, we find that the additional information we have marked in the sexual harassment investigations and in the remaining submitted information is highly intimate or embarrassing and of no legitimate public interest. Therefore, the district must withhold the marked information under section 552.101 of the Government Code in conjunction with common-law privacy. None of the remaining information, however, is confidential under common-law privacy and it may not be withheld on that basis.

Section 552.101 also encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. ORD 455 at 4. The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5; see *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985). Upon review, we find none of the remaining information is confidential under constitutional privacy. Therefore, the district may not withhold any information under section 552.101 on that ground.

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<sup>4</sup>Our ruling is dispositive of your other arguments for this information.

We note that the remaining information includes college transcripts subject to section 552.102(b) of the Government Code, which excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee."<sup>5</sup> Gov't Code § 552.102(b). However, section 552.102(b) further provides, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id.* Thus, with the exception of the information that reveals the employee's name, the degree obtained, and the courses taken, the district must withhold the transcripts we have marked under section 552.102(b). *See* Open Records Decision No.526 (1989).

Rule 503 of the Texas Rules of Evidence encompasses the attorney-client privilege and provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503(b)(1). A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5). Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that

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<sup>5</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. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the information is privileged and confidential under rule 503, provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.—Houston [14th Dist.] 1993, no writ).

You claim that portions of the remaining information consist of confidential attorney-client communications that were made in furtherance of the rendition of professional legal services to the district. You have identified the parties to the communications. Based on your representations and our review of the remaining information, we agree that the information we have marked reveals confidential communications made between privileged parties. Accordingly, this information is protected by the attorney-client privilege and may be withheld pursuant to rule 503 of the Texas Rules of Evidence. However, we find that you have failed to establish that any of the remaining information constitutes privileged attorney-client communications. Therefore, none of the remaining information may be withheld under rule 503 of the Texas Rules of Evidence.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the district employs commissioned peace officers with the authority to enforce the criminal provisions of state law. You assert that the information you have marked relates to an ongoing criminal investigation conducted by the district’s police department, the Dallas Police Department, and the district attorney’s office. Based on this representation and our review, we agree that the district may withhold the information you have marked under section 552.108(a)(1) of the Government Code.<sup>6</sup>

Section 552.117(a)(1) of the Government Code excepts from disclosure the 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 this information be kept confidential under section 552.024 of the Government Code. Gov’t Code § 552.117(a)(1). We note that section 552.117 also encompasses personal cellular telephone numbers, provided that the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)*. Whether a particular piece of information is protected by 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)*. The district may only withhold the information at issue under section 552.117(a)(1) if the

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<sup>6</sup>As our ruling is dispositive, we need not address your remaining arguments for this information.

individuals in question elected confidentiality under section 552.024 prior to the date on which the request for this information was made. If the individuals made timely elections under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. If the individuals did not make timely elections under section 552.024, the district may not withhold the marked information under section 552.117(a)(1).

Section 552.117(a)(2) excepts from public disclosure the home address, telephone number, social security number, and the family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure, regardless of whether the officer requested confidentiality under section 552.024 or section 552.1175 of the Government Code. *See* Gov't Code § 552.117(a)(2). The district must withhold the information we have marked that pertains to a peace officer under section 552.117(a)(2) of the Government Code.

Section 552.130 of the Government Code excepts from disclosure information that relates to a Texas motor vehicle driver's license or a Texas motor vehicle title or registration. *Id.* § 552.130(a)(1), (2). The district must withhold the Texas motor vehicle record information we have marked in the remaining information under section 552.130.

Section 552.135 of the Government Code provides 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 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.

*Id.* § 552.135(a)-(c). 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 the 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). You indicate that some of the remaining information reveals the identities of employees and students of the district who reported possible violations of laws by district employees. Based on this representation and our review of the information in question, we conclude the district must withhold the identity of the individual we have marked under section 552.135 of the Government Code. However, the district has failed to demonstrate how the remaining information reveals the identify of an informer for section 552.135 purposes. Accordingly, none of the remaining information may be withheld on this basis.

Section 552.136 of the Government Code states “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” *Id.* § 552.136(b). The district must withhold the credit card and bank account numbers that we have marked under section 552.136.

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). *Id.* § 552.137(a)-(c). The e-mail addresses in the remaining information are not specifically excluded by section 552.137(c). The district must withhold these e-mail addresses, which we have marked, under section 552.137, unless the owners of the addresses have affirmatively consented to their release.

Portions of the remaining information are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, to the extent the information at issue is encompassed by Open Records Letter Nos. 2009-17085, 2010-01572, and 2010-05011, the district must continue to rely on those rulings and withhold the information we have ruled on previously in accordance with those rulings. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code, section 411.097(d) of the Government Code, section 21.355 of the Education Code, and common-law privacy. The district may withhold the information we have marked under Texas Rule of Evidence 503 and section 552.108(a)(1) of the Government Code. The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code, to the extent the employees at issue made timely elections under section 552.024 of the Government Code, and under section 552.117(a)(2) of the

Government Code. The district must withhold the information we have marked under sections 552.102(b), 552.130, 552.135, 552.136 and 552.137 of the Government Code.<sup>7</sup> The remaining information must be released, but any information protected by copyright may only be released in accordance with copyright law.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/em

Ref: ID# 380995

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>7</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including Texas license plate numbers and driver's license numbers under section 552.130 of the Government Code, bank account and credit card numbers under section 552.136 of the Government Code, and an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.