



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2010

Ms. Carrie Galatas
General Counsel
Conroe Independent School District
3205 West Davis
Conroe, Texas 77304-2098

OR2010-19130

Dear Ms. Galatas:

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# 403878.

The Conroe Independent School District (the "district") received a request for (1) the dates of employment and position titles of a named employee, (2) the employee's personnel file, (3) any disciplinary action taken against the employee, (4) police reports or complaints against the employee, (5) text messages sent by the employee on an district-issued cellular telephone. You state some of the information has been released to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the district has redacted student-identifying information in the submitted incident report pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. However, FERPA is not applicable to law enforcement records maintained by the district's police department (the "department") that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. The submitted incident report consists of law enforcement records prepared by the department. Thus, the submitted incident report is not subject to FERPA, and no portion of it may be withheld on that basis.

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 as follows:

(a) Except as provided by Section 261.203, 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.

(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.

Fam. Code § 261.201(a).¹ Upon review, we find the incident report submitted as Exhibit D was used or developed in an investigation of alleged or suspected child abuse. *See id.* § 261.001(1) (defining "abuse" for purposes of Family Code ch. 261); *see also id.* § 101.003(a) (defining "child" for purposes of this section 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. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, the submitted incident report pertains to an investigation of alleged or suspected abuse conducted by the district's police department. Thus, we find the incident report submitted as Exhibit D is within the scope of section 261.201 of the Family Code. You have not indicated the district's police department has adopted a rule governing the release of this type of information; therefore, we assume no such rule exists. Given that assumption, we conclude the incident report submitted as Exhibit D is confidential pursuant to section 261.201(a) of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district must withhold Exhibit D in its entirety under section 552.101 of the Government Code.²

¹ 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).

²As our ruling is dispositive for this information, we do not address your argument under section 552.108 of the Government Code.

Section 552.101 also encompasses section 21.355 of the Education Code. Section 21.355 provides “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded a teacher is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* In addition, the court has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 because “it reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You state the individual at issue was employed by the district under chapter 21 of the Education Code at the time the request for information was made. However, you do not indicate the individual held a teacher’s certificate or permit under chapter 21 and was performing the functions of a teacher at the time of the respective evaluations. Therefore we must rule conditionally. To the extent the individual in question held a teacher’s certificate or permit and was functioning as a teacher at the time of the evaluations, the district must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the individual in question did not hold a teacher’s certificate or permit or was not functioning as a teacher at the time of the evaluations, the marked information is not confidential under section 21.355 of the Education Code and may not be withheld under section 552.101 of the Government Code. Further, we conclude the remaining information in Exhibit B, consisting of self-report forms written by the teacher at issue, does not evaluate the employee for purposes of section 21.355. Accordingly, none of the remaining information in Exhibit B may be withheld under section 552.101 in conjunction with section 21.355 of the Education Code.

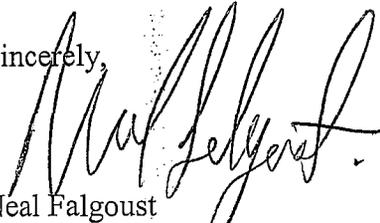
Section 552.102(b) excepts from disclosure higher education transcripts of professional public school employees, but does not except the employee’s name, the courses taken, and the degree obtained from disclosure. Gov’t Code § 552.102(b); Open Records Decision No. 526 (1989). Upon review, the information you have marked and the information we have marked in Exhibit C must be withheld under section 552.102(b) of the Government Code.

In summary, the district must withhold Exhibit D in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. The district must withhold the information we have marked in Exhibit B under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district also must withhold the information you have marked and the information we have marked in Exhibit C under section 552.102(b) of the Government Code. 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.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,



Neal Falgoust
Assistant Attorney General
Open Records Division

NF/vb

Ref: ID# 403878

Enc. Submitted documents

c: Requestor
(w/o enclosures)