



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 25, 2011

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

OR2011-01276

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# 405217 (ORR No. 9750).

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 in 2010. You state the district will make available some of the responsive information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.116, and 552.135 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence.<sup>1</sup> We have considered your arguments and reviewed the submitted information.

We note some of the submitted information is not responsive to the instant request because it does not consist of a report created in 2010. The district does not need to release non-responsive information in response to this request, and this ruling will not address that information.

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with rule 503 of the Texas Rules of Evidence, this office has concluded that section 552.101 does not encompass discovery privileges. See Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990).

Next, we note 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>2</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"). 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>3</sup> We will, however, address the applicability of the claimed exceptions to the submitted information.

Next, we note some of the submitted information appears to be the subject of a previous ruling by this office, in response to which we issued Open Records Letter No. 2010-07825 (2010). As we have no indication the law, facts, and circumstances on which this prior ruling was based have changed, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, the district must continue to rely on this ruling as a previous determination and withhold or release the submitted information we previously ruled on in accordance with Open Records Letter No. 2010-07825. *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 the previous decision, we will address your arguments for the remaining information.

We note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the information is subject to a previous determination issued by this office or section 552.024(c) or section 552.147(b)

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<sup>2</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>.

<sup>3</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.

of the Government Code. *See* Gov't Code § 552.301(a), (e)(1)(D). Some of the redacted information consists of social security numbers, which you are authorized to redact under section 552.147(b) of the Government Code.<sup>4</sup> However, you do not assert, nor does our review of the records indicate, that you have been authorized to withhold any of the remaining redacted information without seeking a ruling from this office. *See id.* § 552.301(a); ORD 673. As such, the information must be submitted in a manner that enables this office to determine whether the information comes within the scope of an exception to disclosure. In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the district should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

The responsive 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." *Id.* § 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, sections 552.107 and 552.116 are not other laws 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 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. Further, sections 552.101, 552.102, and 552.135 of the Government Code are other laws for section 552.022(a)(1) purposes. Therefore, we will consider your arguments under sections 552.101, 552.102, and 552.135 of the Government Code.

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:

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<sup>4</sup>Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

(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 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 portions of the responsive 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 responsive information, we agree the information we have marked reveals confidential communications made between privileged parties and may be withheld under rule 503 of the Texas Rules of Evidence.<sup>5</sup>

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

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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.

Fam. Code § 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 the information at issue was used by these investigating agencies in child abuse investigations. Based upon your representations and our review, we find most of the information we have marked consists of files, reports, records, and working papers used or developed in an investigation of child abuse. In addition, we have marked information which consists of a report of alleged or suspected abuse or neglect made under chapter 261, as well as the identities of reporting parties. Upon review, we find the marked information is within the scope of section 261.201(a) 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>6</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.

Section 552.101 of the Government Code also encompasses section 58.007(c) of the Family Code, which provides as follows:

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

(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.

*Id.* § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age. *Id.* § 51.02(2). Upon review, we find the remaining information does not identify a juvenile suspect or offender for purposes of section 58.007. Accordingly, we find that you have not demonstrated the applicability of section 58.007(c) of the Family Code. Thus, you may not withhold any of the remaining information 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 also encompasses criminal history record information (“CHRI”). Chapter 411 authorizes the Texas Department of Public Safety (the “DPS”) to compile and maintain criminal history record information (“CHRI”) from law enforcement agencies throughout the state and to provide access to authorized persons to federal criminal history records. *See Gov’t Code* §§ 411.042, .087.

In 2007, the Legislature enacted section 411.0845 of the Government Code, which provides in relevant part:

- (a) The [DPS] shall establish an electronic clearinghouse and subscription service to provide [CHRI] to a particular person entitled to receive [CHRI] and updates to a particular record to which the person has subscribed under this subchapter.

(b) On receiving a request for [CHRI] from a person entitled to such information under this subchapter, the [DPS] shall provide through the electronic clearinghouse:

- (1) the [CHRI] reported to the [DPS] or the Federal Bureau of Investigation relating to the individual who is the subject of the request; or
- (2) a statement that the individual who is the subject of the request does not have any [CHRI] reported to the [DPS] or the Federal Bureau of Investigation.

...

(d) The [DPS] shall ensure that the information described by Subsection (b) is provided only to a person otherwise entitled to obtain [CHRI] under this subchapter. Information collected under this section is confidential and is not subject to disclosure under [the Act].

*Id.* § 411.0845(a)-(b), (d). Section 411.097(b) of the Government Code provides in part that “[a] school district . . . is entitled to obtain from [DPS CHRI] maintained by [DPS] that the district . . . is required or authorized to obtain under Subchapter C, Chapter 22, Education Code, that relates to a[n] . . . employee of the district[.]” *Id.* § 411.097(b). Pursuant to section 22.083(a-1) of the Education Code, a school district is authorized to obtain CHRI from DPS’s electronic clearinghouse. *See* Educ. Code § 22.083(a-1)(1). Section 22.08391(d) of the Education Code states that any CHRI received by a school district is subject to section 411.097(d) of the Government Code. Educ. Code § 22.08391(d). Section 411.097(d) provides in relevant part:

(d) [CHRI] obtained by a school district, charter school, private school, service center, commercial transportation company, or shared services arrangement in the original form or any subsequent form:

- (1) may not be released to any person except:
  - (A) the individual who is the subject of the information;
  - (B) the [TEA];
  - (C) the State Board for Educator Certification;
  - (D) the chief personnel officer of the transportation company, if the information is obtained under Subsection (a)(2); or

(E) by court order[.]

Gov't Code § 411.097(d). Some of the remaining information, which we have marked, consists of CHRI obtained by the district through DPS. Therefore, this marked information must be withheld under section 552.101 in conjunction with sections 411.0845 and 411.097(d) of the Government Code. However, none of the remaining information constitutes CHRI and it may not be withheld under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code, which provides “[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act].” *Id.* § 560.003; *see id.* § 560.001(1) (“biometric identifier” means retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry). The remaining information contains fingerprints. There is no indication the requestor has a right of access to the fingerprints under section 560.002. *See id.* § 560.002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual’s biometric identifier to another person unless the individual consents to disclosure). Therefore, the district must withhold the submitted fingerprints, which we have marked, under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code.

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 No. 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* ORD 681 at 8; *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.

Section 552.101 of the Government Code also encompasses section 611.002(a) of the Health and Safety Code, which provides “[c]ommunications between a patient and a professional, and records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional, are confidential.” Health & Safety Code § 611.002(a). Section 611.001 defines a “professional” as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). Sections 611.004 and 611.0045 provide for access to mental health records only by certain individuals. *See* Open Records Decision No. 565 (1990). These sections permit disclosure of mental health records to a patient, a person authorized to act on the patient’s behalf, or a person who has the written consent of the patient. *See* Health & Safety Code §§ 611.004, .0045. Upon review, we find the information we have marked constitutes a mental health record that is confidential under section 611.002 of the Health and Safety Code. This information may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses 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 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.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

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 the information we have marked constitutes confidential medical records that may only be released in accordance with the MPA.

You also claim the remaining information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). Upon review, we find none of the remaining information is excepted under section 552.102(a) of the Government Code. Accordingly, none of the remaining information may be withheld on that basis.

Section 552.101 of the Government Code also encompasses common-law privacy. For information to be protected from public disclosure by the common-law right of privacy, the information must meet the criteria set out by the Texas Supreme Court in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976). In *Industrial Foundation*, the Texas Supreme Court stated information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts, the release of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. 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 supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

You state, and we agree, the information at issue includes an adequate summary of the investigation into alleged sexual harassment. The summary and the statement of the accused are not confidential; however, information within these documents identifying the alleged victim and witnesses, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*. Because there is an adequate summary, the district must also withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the

holding in *Ellen*.<sup>7</sup> None of the remaining information, however, is confidential under common-law privacy, and it may not be withheld under section 552.101 on that basis.

We note some of the remaining information may be subject to section 552.117(a)(1) of the Government Code.<sup>8</sup> Section 552.117(a)(1) excepts from disclosure the home address and telephone number, social security number, and family member information of a current or former official or employee of a governmental body who requests that the information be kept confidential under section 552.024 of the Government Code. Gov't Code § 552.117(a)(1). Section 552.117 also encompasses personal cellular telephone and pager numbers, provided that a governmental body does not pay for the cellular telephone or pager service. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We have marked information under section 552.117(a)(1) of the Government Code. The district must withhold this marked information under section 552.117(a)(1) to the extent the employees concerned timely elected under section 552.024 to keep their information confidential; however, the district may only withhold the cellular telephone and pager numbers we have marked if the employees concerned paid for the cellular telephone and pager services with their own funds.<sup>9</sup>

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(a)(1). Thus, the district must withhold the information we have marked under section 552.130 of the Government Code.

Section 552.135 of the Government Code provides the following:

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<sup>7</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>8</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

<sup>9</sup>Regardless of the applicability of section 552.117 of the Government Code, section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).

(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 state some of the remaining information reveals the identities of employees 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 identities of the individuals we have marked under section 552.135 of the Government Code.<sup>10</sup> However, the district has failed to demonstrate how the remaining information reveals the identity of an informer for section 552.135 purposes. Accordingly, none of the remaining information may be withheld on this basis.

We note some of the remaining information is subject to section 552.136 of the Government Code, which 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 bank account and routing numbers we have marked under section 552.136.

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<sup>10</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

The remaining information also includes military discharge records that are subject to section 552.140 of the Government Code. Section 552.140 provides in part:

(a) This section applies only to a military veteran's Department of Defense Form DD-214 or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003.

*Id.* § 552.140(a). Section 552.140 provides a military veteran's DD-214 form or other military discharge record that is first recorded with or that otherwise first comes into the possession of a governmental body on or after September 1, 2003 is confidential for a period of seventy-five years and may only be disclosed in accordance with section 552.140 or in accordance with a court order. *See id.* § 552.140(a)-(b). We note these records came into the district's possession on or after September 1, 2003. Thus, the district must withhold the submitted military discharge records under section 552.140 of the Government Code.

In summary, to the extent the information at issue is encompassed by Open Records Letter No. 2010-07825, the district must continue to rely on that ruling as a previous determination and withhold or release the submitted information we previously ruled on in accordance with that ruling. The district may withhold the information we have marked pursuant to rule 503 of the Texas Rules of Evidence. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 261.201 of the Family Code, (2) chapter 411 of the Government Code, and (3) section 560.003 of the Government Code. The mental health record we have marked may only be released in accordance with sections 611.004 and 611.0045 of the Health and Safety Code. The marked medical records may only be released in accordance with the MPA. The district must withhold the information we have marked under section 552.101 in conjunction with common-law privacy and the holding in *Ellen*. The district must also withhold the information we have marked under section 552.117(a)(1) to the extent the employees concerned timely elected under section 552.024 to keep their information confidential; however, the district may only withhold the cellular telephone and pager numbers we have marked if the employees concerned paid for the cellular telephone and pager services with their own funds. The district must withhold the information we have marked under sections 552.130, 552.135, 552.136, and 552.140 of the Government Code.<sup>11</sup> The remaining information must be released.

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<sup>11</sup>In Open Records Decision No. 684 (2009), this office issued a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including fingerprints under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code, a Texas license driver's license number under section 552.130 of the Government Code, bank account and routing numbers under section 552.136 of the Government Code, and a Form DD-214 or other military discharge record that is first recorded or first comes into the possession of a governmental body on or after September 1, 2003 under section 552.140 of the Government Code, without the necessity of requesting an attorney general decision.

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,



Jennifer Burnett  
Assistant Attorney General  
Open Records Division

JB/vb

Ref: ID# 405217

Enc. Submitted documents

c: Requestor  
(w/o enclosures)