



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 11, 2012

Ms. Frances Broussard
Thompson & Horton
3200 Southwest Freeway, Suite 2000
Houston, Texas 77027

OR2012-00540

Dear Ms. Broussard:

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# 442020.

The Brownsville Independent School District (the "district"), which you represent, received a request for information pertaining to allegations of professional misconduct against the requestor's client. You state the district has released some of the requested information. It also appears the district has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.022(a) of the Government Code provides in relevant part the following:

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) 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). You inform us the submitted information consists of accompanying documentation to a summative memorandum the district made in conjunction with its review of the climate at a named school concerning a proposed STAMP program. You also state the memorandum itself has been provided to the requestor. Thus, based on your representations, we conclude the submitted information is part of a completed investigation that is subject to section 552.022(a)(1). Although you assert this information is excepted from disclosure under section 552.111 in conjunction with the deliberative process privilege, this section is discretionary and does not make information confidential under the Act. *See* Open Records Decision Nos. 663 at 5 (1999) (governmental body may waive section 552.111); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the submitted information under section 552.111 and the deliberative process privilege. However, section 552.117 of the Government Code makes information confidential under chapter 552.² Therefore, we will consider whether the submitted information is excepted from release under this section.

Section 552.117(a)(1) of the Government Code may be applicable to some of the submitted information. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, emergency contact information, 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 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). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of current or former employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Such information may not be withheld for individuals who did not

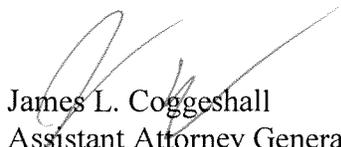
²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987); *see, e.g.*, Open Records Decision No. 470 at 2 (1987) (because release of confidential information could impair rights of third parties and because improper release constitutes a misdemeanor, attorney general will raise predecessor statute of section 552.101 on behalf of governmental bodies).

make a timely election. We have marked information that must be withheld if section 552.117(a)(1) applies. The district must release the remaining information.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/ag

Ref: ID# 442020

Enc. Submitted documents

c: Requestor
(w/o enclosures)