



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 30, 2012

Ms. Jennifer M. Engdale  
For Honey Grove Independent School District  
Powell & Leon, L.L.P.  
1706 West Sixth Street  
Austin, Texas 78703

OR2012-11827

Dear Ms. Engdale:

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# 460344.

The Honey Grove Independent School District (the "district"), which you represent, received a request for a recording of a specified football game, all records pertaining to the investigation of a named individual, any records of two named individuals addressing the district during a specified period of time, and the employment files of two named individuals. You state the district will release some of the requested information. You state the district will redact information under section 552.117 of the Government Code, and the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.<sup>1</sup> You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.102 of

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<sup>1</sup>Section 552.024(c) of the Government Code authorizes a governmental body to redact information subject to section 552.117 without requesting a decision from this office if the employee or official or former employee or official chooses not to allow public access to the information. *See* Gov't Code §§ 552.024(c), .117(a). The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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 that 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>.

the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. This section encompasses information protected by statutes. Section 261.201 of the Family Code provides in part as follows:

(a) [T]he following information is confidential, is not subject to public release under [the Act] 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). We note the district is not an agency authorized to conduct an investigation under chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse or neglect investigations). However, upon review, we find a portion of the submitted information consists of a report of alleged or suspected abuse made under this chapter and reveals the identity of a person who reported the possible child abuse to the Child Protective Services Division of the Texas Department of Family and Protective Services. *See id.* § 261.001(1) (defining “abuse” for purposes of section 261.201); *id.* § 101.003(a) (defining “child” as a person under eighteen years of age who is not and has not been married and who has not had the disabilities of minority removed for general purposes). Therefore, the information we have marked falls within the scope of section 261.201(a)(1). Thus, 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. However, the remaining information does not contain a report of alleged or suspected abuse or neglect made under this chapter or the identity of the person making the report. Further, you do not explain, and the remaining information does not reflect, that it relates to files, reports, records, communications, or working papers used or developed in an investigation under chapter 261 or in providing services as a result of such an investigation. Therefore, the remaining information is not confidential under section 261.201 and may not be withheld on that basis under section 552.101.

Section 552.101 also encompasses section 261.101 of the Family Code, which provides the identity of an individual making a report under chapter 261 is confidential. *See Id.*

§ 261.101(d). As we noted above, 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). Upon review, we find none of the remaining information in Attachment 8 contains the identifying information of an individual who made a report under chapter 261 of the Family Code. Thus, the district may not withhold any of the remaining information in Attachment 8 under section 552.101 in conjunction with section 261.101(d).

Section 552.101 also encompasses section 22.08391 of the Education Code. Subchapter C of chapter 22 of the Education Code addresses criminal history records of school district employees and volunteers. Section 22.08391 provides in part:

(a) Information collected about a person to comply with this subchapter, including the person's name, address, phone number, social security number, driver's license number, other identification number, and fingerprint records:

(1) may not be released except:

(A) to comply with this subchapter;

(B) by court order; or

(C) with the consent of the person who is the subject of the information;

(2) is not subject to disclosure as provided by [the Act]; and

(3) shall be destroyed by the requestor or any subsequent holder of the information not later than the first anniversary of the date the information is received.

Educ. Code § 22.08391(a). Thus, except in the specified circumstances, section 22.08391 prohibits the release of information about a person collected in order to conduct a criminal history record search. You assert the district used a portion of the submitted information to collect information about an employment applicant for purposes of conducting a criminal history record search. Accordingly, we conclude the information we have marked in Attachment 5 must be withheld under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code.

Section 552.101 of the Government Code also encompasses criminal history record information ("CHRI") protected by chapter 411 of the Government Code. Chapter 411 authorizes the Texas Department of Public Safety ("DPS") to compile and maintain 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. Section 411.0845 provides in relevant part:

(a) [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, [DPS] shall provide through the electronic clearinghouse:

(1) the [CHRI] reported to [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 [DPS] or the Federal Bureau of Investigation.

...

(d) [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, “[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). Section 22.083(a) of the Education Code requires a school district to obtain CHRI of a district employee. See Educ. Code § 22.083(a). Section 411.097(d) provides, in relevant part:

(d) [CHRI] obtained by a school district . . . 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 Texas Education Agency;

(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 [and]

(2) is not subject to disclosure as provided by Chapter 552[.]

Gov't Code § 411.097(d). You assert a portion of the submitted information consists of CHRI obtained from the DPS criminal history clearinghouse in accordance with chapter 22 of the Education Code. Upon review, we find the information we have marked is confidential under section 411.097(d) of the Government Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides, “[a] document evaluating the performance of a teacher . . . is confidential.” *See* Educ. Code § 21.355(a). 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. *See* Open Records Decision No. 643 (1996). We have determined for purposes of section 21.355, the term “teacher” means a person who is required to and does in fact hold a teaching certificate or permit under subchapter B of chapter 21 of the Education Code and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. The Third Court of Appeals 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.” *See North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You state a portion of the submitted information consists of teacher evaluations pertaining to the named former employees. You have provided copies of these individuals’ Educator Certificates, indicating they held certification under subchapter B of chapter 21 of the Education Code at the time of the evaluations. You state the individuals at issue were performing the duties of teachers at all relevant times. Based on your representations and our review of the information, the information in Attachment 4, which we have marked, is confidential under section 21.355 of the Education Code, and the district must withhold this information under section 552.101 of the Government Code. However, we find you have failed to demonstrate the remaining information in Attachment 4, which includes teacher self-report forms constitute evaluations of the teacher’s performance as contemplated by section 21.355 of the Education Code. Thus, the district may not withhold the teacher self-report form under section 552.101 on that basis.

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:

(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(b)–(c). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). Medical records must be released on receipt of the patient’s signed, written consent, provided the consent specifies (1) the information to be covered by the release, (2) the reasons or purposes for the release, and (3) the person to whom the information is to be released. *See* Occ. Code §§ 159.004, .005. Any subsequent release of medical records must be consistent with the purposes for which the governmental body obtained the records. *See id.* § 159.002(c); Open Records Decision No. 565 at 7 (1990). Upon review, we find the information we have marked in Attachment 7 consists of a medical record subject to the MPA. Accordingly, the district must withhold this information under section 552.101 of the Government Code, unless the requestor provides the proper consent required by the MPA.<sup>2</sup>

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information if it (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. *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 established. *Id.* at 681–82. The types of information considered highly intimate or 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. *Id.* at 683. This office has found some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under 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

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<sup>2</sup>As our ruling for this information is dispositive, we do not address your remaining arguments against its disclosure.

physical handicaps). This office also has found personal financial information not relating to a financial transaction between an individual and a governmental body is generally 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). Upon review, we find the information we have marked is highly intimate or embarrassing and of no legitimate public interest. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>3</sup>

Section 552.102(b) of the Government Code excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]" Gov't Code § 552.102(b). This exception further provides, however, "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. *Id.* Upon review, we agree the district must withhold the educational transcripts submitted in Attachment 3 under section 552.102(b) of the Government Code, except for the information that reveals the employee's name, the degree obtained, and the courses taken.<sup>4</sup> *See* Open Records Decision No. 526 (1989) (addressing statutory predecessor).

In summary, the district must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code, (2) the information we have marked in Attachment 5 under section 552.101 of the Government Code in conjunction with section 22.08391 of the Education Code, (3) the information we have marked under section 552.101 of the Government Code in conjunction with sections 411.0845 and 411.097(d) of the Government Code, (4) the information we have marked in Attachment 4 under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code, (5) the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy, (6) the information we have marked in Attachment 7 under section 552.101 of the Government Code in conjunction with the MPA, unless the district receives proper consent for release under the MPA, and (7) the educational transcripts submitted in Attachment 3 under section 552.102(b) of the Government Code, except for the information that reveals

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

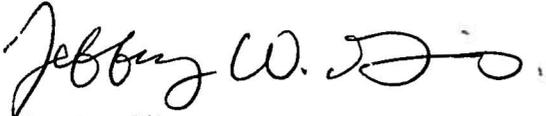
<sup>4</sup>As our ruling for this information is dispositive, we do not address your remaining arguments against its disclosure.

the employee's name, the degree obtained, and the courses taken. 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](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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/dls

Ref: ID# 460344

Enc. Submitted documents

c: Requestor  
(w/o enclosures)