



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 7, 2012

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

OR2012-12350

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# 461142 (ORR#s 11223 and 11267).

The Dallas Independent School District (the "district") received two requests from the same requestor for e-mail correspondence regarding the requestor during specified time periods. You state some of the requested information either has been or will be released. You claim other responsive information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the information you submitted.

We first note the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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.¹ 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

¹A 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>.

is, in a form in which “personally identifiable information” is disclosed. See 34 C.F.R. § 99.3 (defining “personally identifiable information”). In this instance, you have submitted unredacted education records for our review. Because our office is prohibited from reviewing these records to determine the applicability of FERPA, 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.² We will address your exceptions to disclosure of the submitted information under the Act.

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 Code § 552.101. This exception encompasses information other statutes make confidential. Section 261.201 of the Family Code provides in part:

(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); *see id.* §§ 101.003(a) (defining “child” for purposes of Fam. Code title 5), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). You contend the submitted information is confidential in its entirety under section 261.201(a). Having considered your arguments and reviewed the information at issue, we find some of the information consists of reports of alleged or suspected child abuse or neglect made to the district’s child abuse office and the identities of persons who made the reports. We understand the child abuse office includes an employee of the district who is shared with the Texas Department of Family and Protective Services to receive child abuse claims. We conclude the district must withhold the reports and the identities of the persons who made the reports, which we have marked, under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. Although you contend the remaining information consists of records of a child abuse investigation, we find you have not demonstrated the information at issue was used or developed in an investigation

²If in the future the district obtains parental consent to submit unredacted education records to this office and seeks a ruling on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

under chapter 261 of the Family Code or in providing services as a result of an investigation. Instead, the remaining information is related to a personnel matter involving the requestor. We therefore conclude the remaining information is not confidential under section 261.201 of the Family Code and may not be withheld on that basis under section 552.101 of the Government Code.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355(a) provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” 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 or an administrator. *See Open Records Decision No. 643 (1996)*. We have determined that for purposes of section 21.355, “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* 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.). We have marked information the district must withhold under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code if the employee to whom the information pertains held a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and was engaged in the process of teaching when the information was created. If the employee concerned did not hold a teaching certificate under subchapter B of chapter 21 or a school district teaching permit under section 21.055 or was not engaged in the process of teaching when the information was created, the marked information is not confidential under section 21.355, may not be withheld on that basis under section 552.101, and must be released.

Section 552.101 of the Government Code also encompasses common-law privacy, which protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest. *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 elements of the test must be established. *See id.* at 681-82. Common-law privacy encompasses the specific types of information held to be intimate or embarrassing in *Industrial Foundation*. *See id.* at 683 (information relating to sexual assault, pregnancy, mental or physical abuse in workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs). This office has concluded common-law privacy generally protects the identifying information of juvenile victims of abuse or neglect. *See Open Records Decision No. 394 (1983)*; *cf. Fam. Code § 261.201*. We have marked information the district

must withhold under section 552.101 of the Government Code in conjunction with common-law privacy.

Lastly, we address your claim under section 552.135 of the Government Code, which provides as follows:

(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 or persons' 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].

Gov't Code § 552.135. We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. *See id.* § 552.301(e)(1)(A). Thus, individuals who provide information in the course of an investigation but do not make the initial report are not informants for purposes of section 552.135. Although you state the remaining information includes identifying information of informers who reported possible violations of criminal laws, you have not identified the individuals whose identities you seek to withhold. We therefore conclude the district may not withhold any of the remaining information on the basis of section 552.135 of the Government Code.

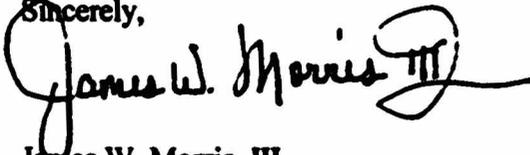
In summary, the district must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code; (2) the information we have marked under section 552.101 in conjunction with section 21.355 of the Education Code if the employee to whom the information pertains held a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and was engaged in the process of teaching when the information was created; and (3) the information we have marked under section 552.101 in conjunction with common-law privacy. The rest of the submitted information must be released. This ruling does not address the applicability of FERPA to the submitted information. Should the district determine that all or portions of the submitted information consist of "education records" that must be withheld under FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act.

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,

A handwritten signature in black ink that reads "James W. Morris III". The signature is written in a cursive style with a large, stylized initial "J" and a long, sweeping underline.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/bhf

Ref: ID# 461142

Enc: Submitted documents

c: Requestor
(w/o enclosures)