



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 17, 2012

Mr. W. Montgomery Meitler
Assistant Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2012-13019

Dear Mr. Meitler:

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# 461201 (TEA PIR Nos. 17610 and 17629).

The Texas Education Agency (the "agency") received two requests from different requestors for information pertaining to a specified investigation at a named school. You state you have redacted social security numbers pursuant to section 552.147(b) of the Government Code.¹ Although you raise no exceptions to disclosure of the submitted information, you state release of this information may implicate the interests of the Dallas Independent School District (the "district"). See Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the district. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note you have redacted confidential educational records pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. The United States Department of Education Family Policy Compliance Office

¹Section 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).

(the “DOE”) has informed this office that FERPA does not permit a state educational agency or institution to disclose to this office, without parental or an adult student’s consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.² *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. Thus, portions of the information the district seeks to withhold, which were redacted by the agency under FERPA, were not submitted by the agency for our review. This office may only rule on the public availability of information submitted by the governmental body requesting the ruling. *See* Gov’t Code § 552.301(e)(1)(D) (governmental body requesting decision from Attorney General must submit copy of specific information requested). Because this information was not submitted by the agency, this ruling does not address the district’s arguments against its disclosure.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. The district claims the submitted documents include information made confidential by section 261.201 of the Family Code, which provides as follows:

(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). The district asserts some of the submitted information is confidential under section 261.201 of the Family Code. *See id.* § 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code); *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 an investigation under

²A 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>.

chapter 261 of the Family Code. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, the district states it has an employee on staff who is shared with the Texas Department of Family and Protective Services (“DFPS”) to receive and investigate child abuse claims. Furthermore, the district states 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, based on these representations and our review, we agree the information we have marked consists of the identity of an individual making a report of alleged or suspected child abuse. Accordingly, we conclude the information we marked is confidential pursuant to section 261.201 of the Family Code, and the agency must withhold it under section 552.101 of the Government Code.³ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Although the district also seeks to withhold other submitted information on this basis, we find the district has not demonstrated the remaining information at issue consists of a report of alleged or suspected child abuse under chapter 261 of the Family Code or the identity of an individual making such a report, nor has the district demonstrated any of the remaining information at issue was used or developed in such an investigation. We therefore conclude the agency may not withhold any of the remaining information under section 552.101 in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides, in relevant part, “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). The district contends some of the submitted information consists of confidential evaluations of a teacher for the district. Initially, we note the agency does not have a right of access to confidential teacher evaluations held by a school district, and therefore, generally, would not be in possession of any information made confidential by section 21.355 of the Education Code. *See id.* § 21.355(a) (does not permit release of confidential evaluations to the agency). Regardless, in this instance, we will address the district’s arguments under section 21.355 of the Education Code for the information at issue.

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 administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “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 and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

³As our ruling is dispositive, we need not address your argument under section 552.135 of the Government Code for the information at issue.

Upon review, we find the information at issue does not evaluate any employee for purposes of section 21.355. Thus, we find the district has failed to demonstrate how any of the information at issue consists of documents evaluating the performance of a teacher for purposes of section 21.355 of the Education Code. Therefore, the agency may not withhold any of the submitted information under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

We note some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; see Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit.

In summary, the agency must withhold the information we have marked under section 261.201 of the Family Code in conjunction with section 552.101 of the Government Code. The remaining information must be released; however, any information that is subject to copyright may be released only in accordance with copyright law.

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,



Cynthia G. Tynan
Assistant Attorney General
Open Records Division

CGT/akg

Ref: ID# 461201

Enc. Submitted documents

c: Requestors
(w/o enclosures)

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204
(w/o enclosures)