



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 30, 2012

Ms. Brandy N. Davis  
Counsel for the Plano ISD  
Abernathy, Roeder, Boyd & Joplin, P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2012-13792

Dear Ms. Davis:

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# 464434.

The Plano Independent School District (the "district"), which you represent, received a request for six categories of information pertaining to a named individual. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. Additionally, you state release of the submitted information may implicate the privacy interests of third parties. Accordingly, you state the district notified the third parties of the request for information and of their rights to submit arguments to this office as to why the submitted information should not be released. *See Gov't Code* § 552.304 (interested party may submit written comments regarding availability of requested information). You state one of the third parties objects to the release of her information. We have considered the submitted arguments and reviewed the submitted information.

Initially, 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 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.<sup>1</sup> Consequently, state and local educational authorities that receive a request for education records from a member of the

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<sup>1</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>.

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”). In this instance, the submitted information includes redacted education records. Because our office is prohibited from reviewing these education records to determine the applicability of FERPA, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education record.<sup>2</sup> We will, however, consider your arguments against disclosure of the submitted information.

Section 552.135 of the Government Code provides the following:

(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). You state portions of the submitted information identify employees of the district who reported potential violations of civil, criminal, or regulatory laws. You do not indicate these individuals consented to public disclosure of their identities. Based on your representations and our review, we have marked information the district must withhold under section 552.135 of the Government Code.<sup>3</sup> We note 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 of the Government Code. Upon review, we find you have failed to demonstrate how the remaining information at issue reveals the identity of individuals who reported another person’s possible violation of criminal, civil, or regulatory law and, thus, has not demonstrated the remaining information reveals the identity of an informer for the purposes of section 552.135. Therefore, the district may not withhold any of the remaining information under section 552.135.

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 the common-law

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<sup>2</sup>In the future, if the district does obtain parental or an adult student’s 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.

<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928). The privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The privilege excepts the informer's statement only to the extent necessary to protect the informer's identity. *See* Open Records Decision No. 549 at 5 (1990).

The district claims the informer's privilege for some of the remaining information. However, as previously noted, witnesses who provide information in the course of an investigation but do not make the initial report of a violation are not informants for the purposes of the common-law informer's privilege. Upon review, we conclude the district may not withhold any of the remaining information under section 552.101 on the basis of the common-law informer's privilege.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone numbers, social security number, family member information, and emergency contact information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code.<sup>4</sup> Gov't Code § 552.117(a)(1). Additionally, section 552.117 encompasses a cellular telephone number, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 670 at 6 (2001) (extending section 552.117 exception to personal cellular telephone number and personal pager number of employee who elects to withhold home telephone number in accordance with section 552.024). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). The district may only withhold information under section 552.117(a)(1) on behalf of an employee who made a request for confidentiality under section 552.024 prior to the date on which the request for information was made. We note that because this exception protects personal privacy, the requestor has a right of access to his client's personal information under section 552.023 of the Government Code. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987). We have marked a cellular telephone number in the remaining information under section 552.117(a)(1) of the Government Code. The

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<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

district must withhold this cellular telephone number under section 552.117(a)(1) to the extent the employee concerned timely elected under section 552.024 to keep his information confidential; however, the district may only withhold the cellular telephone number if the district does not pay for the cellular telephone service.

Section 552.137 of the Government Code provides that “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under [the Act],” unless the owner of the e-mail address has affirmatively consented to its release or the e-mail address is specifically excluded by subsection (c). Gov’t Code § 552.137(a)-(c). We note the requestor has a right of access to his client’s e-mail address and his own e-mail address. *See id.* §§ 552.023, .137(b). Upon review, we find the e-mail address we have marked is not of the types specifically excluded by section 552.137(c) of the Government Code. Accordingly, the district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to disclosure.

In summary, the district must withhold the information we have marked under section 552.135 of the Government Code. The district must withhold the cellular telephone number we have marked under section 552.117(a)(1) to the extent the employee concerned timely elected under section 552.024 of the Government Code to keep his information confidential; however, the district may only withhold the cellular telephone number at issue if the district does not pay for the cellular telephone service. The district must withhold the e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to disclosure. The district must release the remaining information.<sup>5</sup>

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.

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<sup>5</sup>We note the information being released contains information to which the requestor has a right of access under section 552.023 of the Government Code. *See* Gov’t Code § 552.023; *see also* Open Records Decision No. 481 at 4. However, we note section 552.024(c) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee to whom the information pertains timely chooses not to allow public access to the information. *See* Gov’t Code § 552.024(c)(2). Thus, if the district receives another request for the submitted information from a different requestor other than the requestor’s client, section 552.024(c) authorizes the district to withhold the requestor’s client’s personal information if she has timely chosen not to allow access to the information. Further, we note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision. Accordingly, if the district receives another request from an individual other than this requestor or the requestor’s client, the district is authorized to withhold the requestor’s e-mail address and the requestor’s client’s e-mail address under section 552.137 without the necessity of requesting an attorney general decision.

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,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bhf

Ref: ID# 464434

Enc. Submitted documents

c: Requestor  
(w/o enclosures)