



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2012

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

OR2012-14856

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# 465315.

The Dallas Independent School District (the "district") received a request for all completed Office of Professional Responsibility investigations for a specified time period. You state information will be redacted from the requested records pursuant to Open Records Decision No. 684 (2009).¹ You state some of the requested information will be released. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.116, 552.122, and 552.135 of the Government Code and privileged under Texas Rule of Evidence 503. Additionally, you believe release of some of the submitted information may implicate the interests of Office Depot, Inc. ("Office Depot"). Accordingly, you state, and provide documentation demonstrating, the district notified Office Depot of the request for information and of its right to submit arguments stating why its information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of

¹Open Records Decision No. 684 is a previous determination issued by this office authorizing all governmental bodies to withhold ten categories of information without the necessity of requesting an attorney general decision. *See* ORD 684 at 14-15.

exception in certain circumstances). We have received comments from Office Depot. We have considered the submitted arguments and reviewed the submitted information, a portion of which we understand constitutes a representative sample.²

Initially, we note one of the submitted reports was created outside the time period specified in the request for information. As such, this report, which we have marked, is not responsive to the request. This ruling does not address the public availability of any information that is not responsive to the request, and the district need not release such information in response to this request.

Next, we note a majority of the responsive reports were the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2012-05544 (2012), 2012-05871 (2012), 2012-05931 (2012), 2012-09136 (2012), and 2012-09786 (2012). We have no indication that the law, facts, or circumstances on which these prior rulings were based have changed. Accordingly, we conclude the district must continue to rely on these rulings as previous determinations and withhold or release the previously ruled upon information in accordance with Open Records Letter Nos. 2012-05544, 2012-05871, 2012-05931, 2012-09136, and 2012-09786.³ See Open Records Decision No. 673 at 6-7 (2001) (so long as law, facts, circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Next, we note that 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.⁴ 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

²This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

³As our ruling is dispositive, we need not address your arguments or Office Depot's submitted arguments against disclosure of this information.

⁴A copy of this letter may be found on 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”). We note FERPA is not applicable to law enforcement records maintained by the district’s police department for law enforcement purposes. 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3 (defining “education record”), .8. You state you have redacted information under FERPA. However, we note you have also submitted unredacted education records, as well as handwritten student statements, for our review. See Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). Because this office is prohibited from reviewing an education record for the purpose of determining whether appropriate redactions have been made under FERPA, we will not address the applicability of FERPA to the remaining responsive information. Such determinations under FERPA must be made by the educational authority in possession of the education records.⁵ However, we will consider your exceptions to disclosure under the Act for the remaining responsive 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 other statutes such as section 21.355 of the Education Code, which provides in part 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 ORD 643 at 4. We also have determined “administrator” in section 21.355 means a person who is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* 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 contend some of the remaining information is confidential under section 21.355. You state the information at issue consists of an evaluation of an administrator or teacher

⁵If in the future the district does obtain parental consent to submit unredacted education records and seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

employed by the district who was functioning as an administrator or teacher and was required to and did hold the appropriate certifications under subchapter B of the Education Code when the individual was evaluated. However, we conclude you have not demonstrated any of the remaining responsive information evaluates the performance of a teacher or administrator for purposes of section 21.355. Accordingly, none of the remaining responsive information may be withheld under section 21.355 of the Education Code in conjunction with section 552.101.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Section 58.007 provides in pertinent part as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Fam. Code § 58.007(c). Juvenile law enforcement records relating to delinquent conduct or conduct indicating a need for supervision that occurred on or after September 1, 1997 are confidential under section 58.007. *See id.* § 51.03(a), (b) (defining “delinquent conduct” and “conduct indicating a need for supervision”). For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). You contend one of the remaining responsive reports is confidential under section 58.007. However, upon review, we find the report at issue pertains to an administrative investigation into complaints that a district employee allegedly failed to comply with district policy in reporting and handling certain incidents. The information at issue does not constitute a law enforcement record relating to delinquent conduct or conduct indicating a need for supervision of juvenile suspects or offenders. As such, you have failed to demonstrate the applicability of section 58.007 and we find the district may not withhold the information at issue under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code. Section 261.201 provides, in part:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

Id. § 261.201(a). You contend some of the remaining responsive reports are confidential under section 261.201. 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 investigations). You explain, however, the district has on its staff an employee who is shared with the Texas Department of Family and Protective Services (“DFPS”) to receive and investigate claims of child abuse. You also state the information at issue was obtained by the Dallas Police Department, the DFPS, and/or district police officers who are commissioned peace officers to investigate claims of child abuse. Based on your representations and our review, we find the information we have marked for withholding was used or developed in investigations by one or more authorized entities under chapter 261 of the Family Code, so as to fall within the scope of section 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 Fam. Code ch. 261). Thus, we conclude the district must withhold the reports we have marked for withholding in their entirety under section 552.101 in conjunction with section 261.201 of the Family Code.⁶ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

However, we find one of the remaining responsive reports you have marked under section 261.201 does not pertain to an investigation of child abuse or neglect. *See* Fam. Code § 261.001(1), (4). As such, we find you have failed to demonstrate how this report was used or developed in an investigation under chapter 261 of the Family Code; thus, the district may not withhold this report in its entirety under section 552.101 on this basis. We note, however, that some of the information within the report at issue was used or developed in

⁶As our ruling is dispositive, we need not address your remaining arguments for this information.

investigations by one or more authorized entities under chapter 261 of the Family Code, so as to fall within the scope of section 261.201. Accordingly, the district must withhold this information, which we have marked for withholding, under section 552.101 in conjunction with section 261.201 of the Family Code.

For another remaining report you seek to withhold as confidential under section 261.201, we can not determine from the submitted information whether the victims in this instance were under 17 years of age at the time of the alleged or suspected abuse; accordingly, we must rule conditionally for this report. Therefore, if any of the victims in the report we have marked were under 17 years of age at the time of the alleged or suspected abuse, then the district must withhold the report we have marked in its entirety under section 552.101 in conjunction with section 261.201 of the Family Code. If none of the victims in the report we have marked were under 17 years of age at the time of the alleged or suspected abuse, then the district may not withhold the marked report on this basis. In this instance, we will address your remaining argument against disclosure of this report. Although you also seek to withhold some of the remaining responsive information as confidential under section 261.201, we find you have not demonstrated the remaining information at issue was used or developed in investigations under chapter 261 of the Family Code. We therefore conclude the district may not withhold any of the remaining responsive information under section 552.101 on the basis of section 261.201 of the Family Code.

Section 552.101 of the Government Code also encompasses chapter 411 of the Government Code. Criminal history record information ("CHRI") generated by the National Crime Information Center or by the Texas Crime Information Center is confidential under federal and state law. Gov't Code § 411.083(a); Open Records Decision No. 565 (1990). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. ORD 565 at 7. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI the Department of Public Safety ("DPS") maintains, except DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov't Code § 411.083. A school district may obtain CHRI from DPS as authorized by section 411.097 and subchapter C of chapter 22 of the Education Code; however, a school district may not release CHRI except as provided by section 411.097(d). *See id.* § 411.097(d); Educ. Code § 22.083(c)(1) (authorizing school district to obtain from any law enforcement or criminal justice agency all CHRI relating to school district employee); *see also* Gov't Code § 411.087. Section 411.087 authorizes a school district to obtain CHRI from the Federal Bureau of Investigation or any other criminal justice agency in this state. Gov't Code § 411.087. Thus, any CHRI the district obtained from DPS or any other criminal justice agency in this state must be withheld under section 552.101 of the Government Code in conjunction with section 411.097(d) of the Government Code. *See* Educ. Code § 22.083(c)(1). We note section 411.083 does not apply to active warrant information or other information pertaining to one's current involvement with the criminal justice system. *See* Gov't Code § 411.081(b) (police department allowed

to disclose information pertaining to person's current involvement in the criminal justice system). We further note CHRI does not include driving record information. *Id.* § 411.082(2)(B). Upon review, we find none of the remaining responsive information constitutes confidential CHRI for the purposes of chapter 411. As such, the district may not withhold any of the remaining responsive information under section 552.101 on this basis.

Section 552.101 of the Government Code also encompasses section 560.003 of the Government Code. Section 560.003 provides that "[a] biometric identifier in the possession of a governmental body is exempt from disclosure under [the Act]." *Id.* § 560.003; *see also id.* §§ 560.001(1) (defining "biometric identifier" to include fingerprints), .002(1)(A) (governmental body may not sell, lease, or otherwise disclose individual's biometric identifier to another person unless individual consents to disclosure). Upon review, we find the district must withhold the fingerprints we have marked under section 552.101 in conjunction with section 560.003 of the Government Code.

We note the remaining responsive information includes a mental health record subject to section 611.002 of the Health and Safety Code. Section 611.002 is also encompassed by section 552.101 of the Government Code and provides, "[c]ommunications between a patient and a professional, records of the identity, diagnosis, evaluation, or treatment of a patient that are created or maintained by a professional are confidential." Health & Safety Code § 611.002; *see also id.* § 611.001 (defining "patient" and "professional"). Section 611.001 defines a "professional" as (1) a person authorized to practice medicine, (2) a person licensed or certified by the state to diagnose, evaluate or treat mental or emotional conditions or disorders, or (3) a person the patient reasonably believes is authorized, licensed, or certified. *See id.* § 611.001(2). The mental health record we have marked is confidential under section 611.002 and the district must withhold this information under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code unless it receives consent for release in accordance with sections 611.004 and 611.0045 of the Health and Safety Code.

Section 552.101 of the Government Code also encompasses the constitutional and common-law rights to privacy. Common-law privacy 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. *Id.* at 681-82. However, information pertaining to the work conduct and job performance of public employees is subject to a legitimate public interest and is, therefore, generally not protected from disclosure under common-law privacy. *See Open Records Decision Nos. 470* (public employee's job performance does not generally constitute employee's private affairs), 455 (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion,

or resignation of public employee), 423 at 2 (1984) (scope of public employee privacy is narrow).

In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court addressed the applicability of common-law privacy to information relating to an investigation of alleged sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. See 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* The *Ellen* court held that “the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released.” *Id.*

Thus, if there is an adequate summary of an investigation of sexual harassment, the summary must be released along with the statement of the person accused of sexual harassment, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. If no adequate summary of the investigation exists, then detailed statements regarding the allegations must be released, but the identities of victims and witnesses must be redacted from the statements. In either event, the identity of the individual accused of sexual harassment is not protected from public disclosure. We note that supervisors are generally not witnesses for purposes of *Ellen*, except where their statements appear in a non-supervisory context.

You assert one of the remaining responsive reports falls within the scope of *Ellen*. Based on your representations and our review, we find the report at issue consists of records of an investigation of sexual harassment. You contend, and we agree, the information contains an adequate summary of the investigation. The summary is not confidential under section 552.101 in conjunction with common-law privacy. However, information within the summary identifying victims and witnesses of the sexual harassment is confidential under common-law privacy and must be withheld pursuant to section 552.101. See *Ellen*, 840 S.W.2d at 525. Accordingly, the district must withhold the marked information that identifies the victims and witnesses within the summary and the remaining records of the investigation, which we also have marked, under section 552.101 in conjunction with common-law privacy and *Ellen*. The district may not withhold any of the remaining information within the summary under section 552.101 on this basis.

We note a portion of the sexual harassment investigation summary is subject to the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code. Section 552.101 of the Government Code also encompasses medical records made confidential under the MPA. Section 159.002 of the MPA provides in pertinent 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). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has determined that 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). We have also found that when a file is created as the result of a hospital stay, all the documents in the file relating to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 (1990). Upon review, we find the information we have marked was obtained from a confidential medical record under the MPA. Thus, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA.

Common-law privacy under section 552.101 of the Government Code also encompasses the specific types of information the Texas Supreme Court held to be intimate or embarrassing in *Industrial Foundation*. *See* 540 S.W.2d 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). The type of information considered 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.

A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Moreover, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. We note, however, active warrant information or other information relating to an individual's current

involvement in the criminal justice system does not constitute criminal history information for the purposes of section 552.101. *See* Gov't Code § 411.081(b). We also note that records relating to routine traffic violations are not considered criminal history information. *See id.* § 411.082(2)(B) (criminal history record information does not include driving record information). Additionally, this office has found that some kinds of medical information or information indicating disabilities or specific illnesses are excepted from required public disclosure under common-law privacy. *See* ORD Nos. 470 (illness from severe emotional and job-related stress), 455 (prescription drugs, illnesses, operations, and physical handicaps). However, this office has noted the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.,* Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (job performance does not generally constitute public employee's private affairs), 444 at 3 (public has obvious interest in information concerning qualifications and performance of government employees), 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest), 329 (1982) (reasons for employee's resignation ordinarily not private). We note the doctrine of common-law privacy generally protects the identifying information of juvenile offenders and of juvenile victims of abuse or neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code §§ 58.007, 261.201. Additionally, information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. *See* Open Records Decision Nos. 440, 393 (1983), 339 (1982). Upon review, we find that the information we have marked is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district must withhold the information we have marked pursuant to section 552.101 in conjunction with common-law privacy. None of the remaining responsive information is highly intimate or embarrassing and not of legitimate public concern. Therefore, the district may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code. The remaining responsive information is not excepted under section 552.102(a) and may not be withheld on that basis.

Section 552.117 of the Government Code 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.⁷ Gov't Code § 552.117(a)(1). Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 of the Government Code not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular piece of 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, a governmental body must withhold information under section 552.117 on behalf of current or former employees only if these individuals made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employees whose information is at issue timely elected to keep their information confidential pursuant to section 552.024 and the cellular telephone service is not paid for by a governmental body, the district must withhold the information we have marked under section 552.117(a)(1).⁸ The district may not withhold this information under section 552.117 if the employees did not timely elect to keep their information confidential or if the cellular telephone service is paid for by a governmental body.

Section 552.130(a)(1) of the Government Code provides information relating to a motor vehicle operator's or driver's license or permit issued by an agency of Texas or another state or country is excepted from public release. Gov't Code § 552.130(a)(1). We find the district must withhold the information we have marked under section 552.130(a)(1) of the Government Code.

Section 552.135 of the Government Code provides in part:

(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].

(c) Subsection (b) does not apply:

⁷The 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).

⁸In the event the social security numbers we have marked are not excepted from disclosure under section 552.117(a)(1) of the Government Code, we note section 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 under the Act. Gov't Code § 552.147(b).

- (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or
- (2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or
- (3) if the informer planned, initiated, or participated in the possible violation.

Id. § 552.135(a)-(c). 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. Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. We note this section does not protect the identity of an individual who planned, initiated, or participated in a possible violation of law. *See id.* § 552.135(c)(3). You state some of the remaining responsive information identifies employees and students of the district who reported potential violations of criminal or civil laws. You state these individuals have not consented to public disclosure of their entities. Based on your representations and our review, we have marked information the district must withhold under section 552.135 of the Government Code. However, we find none of the remaining responsive information identifies an informer for the purposes of section 552.135; thus, none of the remaining responsive information may be withheld on this basis.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *Id.* § 552.137(a)-(c). Section 552.137 is not applicable to an institutional e-mail address, an Internet website address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, or an e-mail address maintained by a governmental entity for one of its officials or employees. The e-mail addresses we have marked are not of the types specifically excluded by section 552.137(c). Accordingly, the district must withhold the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release.⁹

You state and we agree, some of the remaining responsive information appears to be protected by copyright. A custodian of public records must comply with the copyright law

⁹As previously noted, Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten 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.

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.

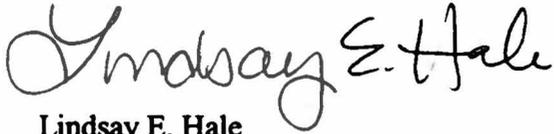
In summary, the district must continue to rely on Open Records Letter Nos. 2012-05544 (2012), 2012-05871 (2012), 2012-05931 (2012), 2012-09136 (2012), and 2012-09786 (2012) as previous determinations and withhold or release the previously ruled upon information in accordance with the prior rulings. The 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. If any of the victims in the report we have marked were under 17 years of age at the time of the alleged or suspected abuse, then the district must withhold the report we have marked in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must also withhold the following: (1) the fingerprints we have marked under section 552.101 of the Government Code in conjunction with section 560.003 of the Government Code; (2) the information we marked under section 552.101 of the Government Code in conjunction with section 611.002 of the Health and Safety Code; (3) the information we have marked pertaining to the sexual harassment investigation pursuant to section 552.101 of the Government Code in conjunction with common-law privacy and the holding in *Ellen*; (4) the information we have marked under section 552.101 of the Government Code in conjunction with the MPA; (5) the other information we have marked pursuant to section 552.101 of the Government Code in conjunction with common-law privacy; (6) the information we marked under section 552.102(a) of the Government Code; (7) the information we have marked under section 552.117(a)(1) of the Government Code if the employees whose information is at issue made timely elections and the cellular telephone service is not paid for by a governmental body; (8) the information we have marked under section 552.130 of the Government Code; and (9) the e-mail addresses we have marked under section 552.137 of the Government Code unless the owners of the addresses affirmatively consent to their release. The district must release the remaining responsive information; however, any information protected by copyright may only be released 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,

A handwritten signature in cursive script that reads "Lindsay E. Hale".

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 465315

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)