



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 4, 2013

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

OR2013-01975

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# 477816 (ORR # 11699).

The Dallas Independent School District (the "district") received a request for any documents from a specified time period pertaining to specified investigations concerning or involving the requestor's client. You claim the submitted 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 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, 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 is, in a form in which "personally identifiable information" is disclosed. See 34 C.F.R. § 99.3

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.

(defining “personally identifiable information”). You have submitted unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, 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 such records.² However, we will consider your arguments against disclosure of the submitted information.

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. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides:

(a) Except as provided by Section 261.203, the 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); *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 disabilities of minority removed for general purposes), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of Family Code ch. 261). You claim the submitted information is confidential in its entirety 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 inform us the district received the information at issue from the Dallas Police Department, DFPS, and/or district police officers who are commissioned peace officers with the authority to investigate claims of child abuse. Based

²In the future, if the district does obtain parental 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.

on your representations and our review, we find the information we have marked consists of a report of alleged or suspected child abuse or neglect made under chapter 261 of the Government Code and the identity of the individual who made the report or was used or developed in investigations by one or more authorized entities under chapter 261, so as to fall within the scope of section 261.201(a). Thus, we conclude the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.³ See Open Records Decision No. 440 at 2 (1986) (predecessor statute). However, we find the remaining information relates to an administrative investigation by the district. Thus, this information does not consist of files, reports, records, communications, audiotapes, videotapes, or working papers used or developed in an investigation of alleged or suspected child abuse under chapter 261. Accordingly, the district may not withhold this information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.

Section 552.101 of the Government Code 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 met. *Id.* at 681-82. The types of information considered intimate and 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. See *id.* at 683. This office has also found 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 note, however, the public generally has a legitimate interest in information that relates to public employment and public employees. See Open Records Decisions 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), 542 (1990), 470 at 4 (public has legitimate interest in job qualifications and performance of public employees), 444 at 5-6 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 423 at 2 (1984) (scope of public employee privacy is narrow). Upon review, we find some of the remaining information is highly intimate or embarrassing and of no legitimate public interest. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

Section 552.135 of the Government Code provides in part:

³As our ruling for this information is dispositive, we need not address your remaining argument against its release.

(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(a)-(b). 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. Additionally, 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. You assert the remaining information contains personally identifiable information of informers who reported possible violations of criminal and civil law. Upon review, we find no portion of the information at issue contains the identity of an informer for section 552.135 purposes. We therefore conclude the district may not withhold any of the remaining information on the basis of section 552.135 of the Government Code.

We note the remaining information contains the birth dates of two district employees that are subject to section 552.102(a) of the Government Code.⁴ This section excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *See id.* § 552.102(a). The Texas Supreme Court has 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). In this instance the birth dates at issue include the requestor's client's birth date. Because section 552.102 protects personal privacy, the requestor has a special right of access to his client's birth date pursuant to section 552.023 of the Government Code. *See Gov't Code § 552.023(a)* (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from public disclosure by law intended to protect person's privacy interests); ORD 481 at 4 (privacy theories not implicated when individual requests information concerning herself). The remaining birth date at issue is that of another district employee. Thus, the district must withhold this information, which we have marked, under section 552.102(a) of the Government Code.

We also note portions of the remaining information may be subject to section 552.117(a)(1) of the Government Code, which excepts from disclosure the home addresses and telephone numbers, emergency contact information, social security numbers, and family member

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

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. *See* Gov't Code § 552.117(a)(1). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former official or employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. We note section 552.117 also protects personal privacy. Therefore, the requestor has a special right of access to his client's personal information pursuant to section 552.023. *See* Gov't Code § 552.023(a); ORD 481 at 4. The remaining personal information at issue is that of other district employees. Accordingly, if the district employees whose personal information we have marked timely requested confidentiality under section 552.024 of the Government Code, the district must withhold this information under section 552.117(a)(1) of the Government Code. Otherwise, the district may not withhold the information at issue on that basis.⁵

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with (1) section 261.201(a) of the Family Code and (2) common-law privacy. The district must withhold the birth date we have marked under section 552.102 of the Government Code. If the district employees whose personal information we have marked timely requested confidentiality under section 552.024 of the Government Code, the district must withhold this information under section 552.117(a)(1) of the Government Code. The district must release the remaining information.⁶

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

⁵Regardless of the applicability of section 552.117(a)(1) of the Government code, we note section 552.147(b) of the Government Code permits a governmental body to redact a living person's social security number without the necessity of requesting a decision from this office. *See* Gov't Code § 552.147(b).

⁶We note the requestor has a special right of access to some of the information being released in this instance. Because such information is confidential with respect to the general public, if the district receives another request for this information from a different requestor, the district must again seek a ruling from this office.

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, appearing to read 'KLC', with a long horizontal flourish extending to the right.

Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 477816

Enc. Submitted documents

c: Requestor
(w/o enclosures)