



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 6, 2013

Mr. Andrew B. Thompson
Assistant General Counsel
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2013-21259

Dear Mr. Thompson:

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# 507860.

The Corpus Christi Independent School District (the "district") received a request for the discipline reports of a named individual and all reports relating to a specified incident. You state you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the remaining 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.

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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides in relevant part:

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

(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 [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.

Fam. Code § 261.201(a). 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). Upon review, we agree a portion of the submitted information, which we have marked, relates to an investigation of alleged or suspected child abuse by the district's police department (the "department"). *See id.* §§ 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code), 101.003(a) (defining "child" for purposes of section 261.201 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). Accordingly, we find this information is subject to chapter 261 of the Family Code. You do not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, and based on our review, we conclude the information we have marked must be withheld under section 552.101 of the Government Code. However, we find the remaining information pertains to an administrative investigation by the district. You have failed to demonstrate how this information is subject to chapter 261, and it may not be withheld on that basis.

Section 552.101 also encompasses section 21.355 of the Education Code, which provides, "[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 administrator. *See* Open Records Decision No. 643 at 3 (1996). Additionally, the Third Court of Appeals has concluded a written reprimand constitutes an evaluation for purposes of section 21.355 as it "reflects the principal's judgment regarding [a teacher's] actions, gives corrective direction, and provides for further review." *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App. —Austin 2006, no pet.). We have also determined a "teacher" for purposes of section 21.355 means a person who is required to and does in fact hold a certificate or permit under chapter 21 of the Education Code and is teaching at the time of the evaluation. *See* ORD 643 at 4. Upon review, we find some of the remaining information consists of an evaluation for purposes of section 21.355. You state the individual who was the subject of this evaluation was a certified teacher for the district at the

time of the evaluation. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, the district has failed to demonstrate the remaining information constitutes an evaluation for the purposes of section 21.355. Thus, the remaining information may not be withheld under section 552.101 on that basis.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member 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. *See Gov't Code* §§ 552.024, .117. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the individual whose information is at issue made a timely election under section 552.024, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. To the extent the individual did not make a timely election under section 552.024, the district may not withhold the information we have marked under section 552.117(a)(1) of the Government Code.²

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].

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

²Section 552.024(c)(2) 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 or official to whom the information pertains timely chooses not to allow public access to the information. *See Gov't Code* § 552.024(c)(2).

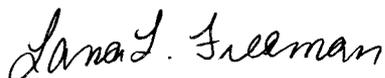
section 552.135 of the Government Code. You state the remaining information contains personally identifiable information of informers who reported possible violations of criminal law. However, we find no portion of the remaining information contains the identity of an informer for section 552.135 purposes. Therefore, we 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 the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. The district must also withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. To the extent the individual whose information is at issue made a timely election under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The remaining information must be released.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lana L. Freeman
Assistant Attorney General
Open Records Division

LLF/akg

Ref: ID# 507860

Enc. Submitted documents

c: Requestor
(w/o enclosures)