



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 28, 2014

Ms. Lauren M. Wood
Counsel for Argyle Independent School District
Abernathy Roeder Boyd & Joplin, P.C.
P.O. Box 1210
McKinney, Texas 75070-1210

OR2014-05216

Dear Ms. Wood:

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# 518041.

The Argyle Independent School District (the "district"), which you represent, received a request for all grievances filed against a named individual in the last five years and related investigations, and information pertaining to any ongoing investigations involving the named individual.¹ You state you have redacted information pursuant to the Family Education Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.²

¹We note the district asked for and received clarification regarding this request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); *see City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

You claim the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. You further state release of the submitted information may implicate the privacy interests of third parties. Accordingly, you state, and provide documentation showing, you notified the third parties of the request for information and of their right 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). We have considered your arguments and reviewed the submitted information.

You claim some of the submitted information is excepted from disclosure under section 552.135 of the Government Code. Section 552.135 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 section 552.135 of the Government Code. You state the submitted information contains personally identifiable information of informers who reported possible violations of section 247.2 of title 19 of the Texas Administrative Code to their supervisors and other district personnel. *See* 19 T.A.C. § 247.2 (Code of Ethics and Standard Practices for Texas Educators); *see also* Educ. Code § 21.041(b) (Texas Education Agency shall propose rules providing for disciplinary proceedings). We conclude the district must withhold the identifying information of the employee who initially reported the possible violations, which we have marked, under section 552.135 of the Government Code. However, we find the district has failed to demonstrate how any of the remaining information reveals the identity of an individual who made an initial report of a possible violation to the school district or the proper regulatory enforcement authority 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 portion of the remaining information under section 552.135 of the Government Code.

We understand you seek to withhold the remaining information under section 552.101 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be

highly objectionable to a reasonable person and (2) 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 satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. This office has found a legitimate public interest in information relating to employees of governmental bodies and their employment qualifications and job performance. *See* Open Records Decision Nos. 542 at 5 (1990), 470 at 4 (1987) (public has legitimate interest in job qualifications and performance of public employees); *see also* Open Records Decision No. 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 the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. Although you raise *Ellen*, we note none of the submitted information pertains to a sexual harassment investigation. Furthermore, we find none of the remaining information is highly intimate or embarrassing and not of legitimate concern. Accordingly, none of the remaining information may be withheld under section 552.101 in conjunction with common-law privacy.

In summary, if the district must withhold the information we have marked under section 552.135 of the Government Code. The district must release the remaining information.

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/bhf

Ref: ID# 518041

Enc. Submitted documents

c: Requestor
(w/o enclosures)