



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 1, 2014

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204-5491

OR2014-05386

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# 518210 (Dallas ISD Open Records Request No. 12697).

The Dallas Independent School District (the "district") received a request for investigative reports by the district's Office of Professional Responsibility ("OPR") or the Internal Audit Division that were completed during 2013 with respect to Kimball High School. The district states it has made some of the requested information available to the requestor, but claims the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, 552.116, and 552.135 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office has informed this office that 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.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must

¹A copy of this letter may be found on the Office of the Attorney General's website: http://www.oag.state.tx.us/opinopen/og_resources.shtml.

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”). You have submitted, among other things, 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. Such determinations under FERPA must be made by the educational authority in possession of the education records.² We will, however, address the applicability of the claimed exceptions to the submitted information.

Next, you inform us some of the requested information was the subject of previous requests for information, in response to which this office issued Open Records Letter Nos. 2013-20266 (2013), 2014-04308 (2014), and 2014-05137 (2014). We have no indication the law, facts, and circumstances on which the prior rulings were based have changed. Accordingly, the district must continue to rely on Open Records Letter Nos. 2013-20266, 2014-04308, and 2014-05137 as previous determinations and withhold or release the identical information in accordance with them.³ We will address your arguments against the release of the submitted information not encompassed by these rulings.

We next note the remaining information consists of completed investigations that are subject to section 552.022(a)(1) of the Government Code, which reads as follows:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). The district must release the completed investigations pursuant to section 552.022(a)(1), unless they are excepted from disclosure under section 552.108 of the Government Code or are made confidential under the Act or other law. *See id.* Sections 552.101, 552.102, 552.117, 552.135, and 552.147(a-1) of the Government Code

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.

³As our ruling is dispositive, we do not address your other arguments to withhold this information.

make information confidential under the Act.⁴ Accordingly, we will consider the applicability of these sections to the remaining 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 section 261.201(a) of the Family Code, which states the following:

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 the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of Family Code chapter 261). You claim some of the information at issue is 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 state the information was obtained from the Dallas Police Department, the Texas Department of Family and Protective Services ("DFPS"), or the district's police department (the "department"). You also state the district has on staff an employee who is shared with DFPS to receive and investigate child abuse claims. Upon review, we find some of the remaining information consists of reports of alleged or suspected abuse or neglect of children made to DFPS. Therefore, this information, which we have marked, is confidential under section 261.201(a) of the Family Code, and the district must withhold it under section 552.101 of the Government Code. However, the remaining information was not obtained from the Dallas Police Department, DFPS, or the department, but instead relates to administrative investigations by the district. Thus, we find you have failed to demonstrate any of the remaining information was used or developed in an investigation of alleged or

⁴The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body. *See Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).*

suspected child abuse, or consists of a report of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Therefore, the remaining information is not confidential under section 261.201 of the Family Code, and the district may not withhold it under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 261.101 of the Family Code, which provides the identity of an individual making a report under chapter 261 is confidential. *See id.* § 261.101(d). As noted above, the district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). Upon review, we find none of the remaining information contains the identifying information of an individual who made a report under chapter 261 of the Family Code. Thus, the district may not withhold any of the remaining information under section 552.101 in conjunction with section 261.101(d).

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See Occ. Code* §§ 151.001-168.202. Section 159.002 of the MPA provides, in relevant part:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(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.

Id. § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded 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). The remaining information contains documents created by a school nurse that may be subject to the MPA. Therefore, the district must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with the MPA if it was created under the supervision of a physician. However, if this information was not created under the supervision of a

physician, then it is not confidential under the MPA and the district may not withhold it under section 552.101 on that basis.

Section 552.101 of the Government Code also 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 also found that 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 OPR report number 10683 contains the identifying information of juvenile victims of abuse. Accordingly, the district must withhold the names, home addresses and telephone numbers, student identification numbers, and names of the parents of these juvenile victims in OPR report number 10683 under section 552.101 of the Government Code in conjunction with common-law privacy.

You also claim the remaining information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102(a) 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 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). 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. However, the remaining information is not excepted under section 552.102(a) and may not be withheld on that basis.

Section 552.117(a)(1) 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, except as provided by section 552.024(a-1). Gov’t Code §§ 552.117(a)(1), .024. Section 552.024(a-1) of the Government Code provides, “A school district may not require an employee or former employee of the district to choose whether to allow public access to the employee’s or former employee’s social security number.” *Id.* § 552.024(a-1). Thus, the district may only withhold under section 552.117(a)(1) the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. 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(a)(1) on behalf of a current or former employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for the information was made. Accordingly, to the extent the employees whose information is at issue timely elected to keep their information confidential pursuant to section 552.024, the district must withhold the information we have marked under section 552.117(a)(1). However, the district may not withhold this information under section 552.117(a)(1) if the employees did not timely elect to keep their information confidential.

Section 552.117(a)(2) of the Government Code excepts from public disclosure the home addresses, home telephone numbers, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with section 552.024 or section 552.1175 of the Government Code.⁵ Gov't Code § 552.117(a)(2). We have marked a police officer's personal information in the remaining information. The district must withhold the information we have marked under section 552.117(a)(2) of the Government Code.

Section 552.135 of the Government Code provides in part 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].

(c) Subsection (b) does not apply:

(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

⁵"Peace officer" is defined by article 2.12 of the Texas Code of Criminal Procedure.

(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). 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. You state the remaining information identifies students and parents who reported alleged violations of criminal and civil laws. However, we conclude the district has failed to demonstrate how any of the remaining information at issue reveals the identity of an informer for purposes of section 552.135. Therefore, the district may not withhold the remaining information on that ground.

Section 552.147(a-1) of the Government Code provides, "The social security number of an employee of a school district in the custody of the district is confidential." *Id.* § 552.147(a-1). Section 552.147 makes the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *Id.* § 552.024(a-1) (school district may not require current or former district employee to choose whether to allow public access to employee's social security number). The legislative history of sections 552.024(a-1) and 552.147(a-1) reflects the protection afforded by section 552.147(a-1) was intended to extend to both current and former school district employees. *See* House Comm. on Gov't Efficiency and Reform, Bill Analysis, Tex. H.B. 2961, 83rd Leg., R.S. (2013) ("H.B. 2961 seeks to protect the social security number of a school district employee or former employee from public disclosure."). Thus, when reading sections 552.024(a-1) and 552.147(a-1) together, and upon review of the legislative history of these two amendments, we conclude section 552.147(a-1) makes confidential the social security number of a current or former school district employee. Accordingly, the district must withhold the social security numbers of district employees we have marked under section 552.147(a-1) of the Government Code.⁶

In summary, the district must (1) continue to rely on Open Records Letter Nos. 2013-20266, 2014-04308, and 2014-05137 as previous determinations and withhold or release the identical information in accordance with them; (2) withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (3) withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA if it was created under the supervision of

⁶We 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).

a physician; (4) withhold the names, home addresses and telephone numbers, student identification numbers, and names of the parents of the juvenile victims in OPR report number 10683 under section 552.101 of the Government Code in conjunction with common-law privacy; (5) withhold the information we have marked under section 552.102(a) of the Government Code; (6) withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employees at issue timely elected to withhold that information; (7) withhold the information we have marked under section 552.117(a)(2) of the Government Code; (8) withhold the social security numbers of district employees we have marked under section 552.147(a-1) of the Government Code; and (9) release the remaining information. This ruling does not address the applicability of FERPA to the submitted information. Should the district determine that all or portions of the submitted information consist of "education records" that must be withheld under FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act.

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,



James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 518210

Enc. Submitted documents

c: Requestor
(w/o enclosures)