



January 23, 2015

Mr. Jaime J. Muñoz
Counsel for the La Joya Independent School District
Attorney at Law
P.O. Box 47
San Juan, Texas 78589

OR2015-01310

Dear Mr. Muñoz:

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# 550939.

The La Joya Independent School District (the "district"), which you represent, received a request for information pertaining to a named teacher. You state the district will release some of the requested information. 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.

We note that the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the federal 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 not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable" information is disclosed. See 34

¹A copy of this letter may be found on the attorney general's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

C.F.R. § 99.3 (defining “personally identifiable information”). We note you have submitted unredacted records education records for our review. Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address FERPA with respect to those records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education record.

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 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.

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 ch. 261). You contend the submitted information 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). Upon review, we find the information we have marked consists of information used or developed in investigations of alleged child abuse by the district’s police department. Accordingly, the information we have marked is within the scope of section 261.201(a)(1) of the Family Code. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code.² However, we find you have not established the remaining information consists of a report of alleged or suspected child abuse or neglect made under chapter 261 of the Family Code,

²As our ruling on this information is dispositive, we need not address your remaining argument against its disclosure.

information used or developed in an investigation under chapter 261, or identifying information of the person who made a report under chapter 261. We therefore conclude the district may not withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code 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. This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded a teacher is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* In addition, the court 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 Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

Upon review, we find the information we have marked consists of “[a] document evaluating the performance of a teacher” as contemplated by section 21.355. *See* Educ. Code § 21.355(a). Therefore, provided the teacher was required to hold and did hold the appropriate certificate and was teaching at the time of the evaluations at issue, the information we have marked is confidential under section 21.355 and must be withheld under section 552.101 of the Government Code. However, if the teacher did not hold the appropriate certificate or was not teaching at the time of the evaluations at issue, the district may not withhold any of the remaining information under section 552.101 on the basis of section 21.355.

Section 552.135 of the Government Code provides 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 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. 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 this exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.135, .301(e)(1)(A). Thus, section 552.135 protects the identity of an informer but

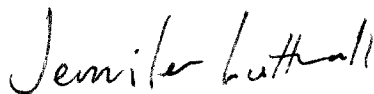
does not protect witness information or statements. You state the remaining information contains personally identifiable information of informers who reported a possible violation of the Code of Ethics and Standard Practices for Texas Educators, section 247.2 of title 19 of the Texas Administrative Code. Upon review of your arguments and the information at issue, we find the district has failed to demonstrate how any portion of the remaining information reveals the identity of an informer for section 552.135 purposes. Therefore, none of the remaining information may be withheld on that basis.

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(a) of the Family Code. Provided the teacher was required to hold and did hold the appropriate certificate and was teaching at the time of the evaluations at issue, the information we have marked must be withheld under 552.101 of the Government Code in conjunction with section 21.355 of the Education 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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JL/akg

Ref: ID# 550939

Enc. Submitted documents

c: Requestor
(w/o enclosures)