



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 8, 2015

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

OR2015-13828

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# 570685 (ORR# 14024).

The Dallas Independent School District (the "district") received a request for five categories of information pertaining to a named teacher, to include performance records, personnel records, and a specified investigation. The district states it will release some of the requested information. The district claims the submitted information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions the district claims and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office 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 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.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"

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

is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”); *see also* Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). The district has 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 the education records. However, we will consider the district’s 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 the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. 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.

Occ. Code § 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). We have further found when a file is created as a result of a hospital stay, all the documents in the file referring to diagnosis and treatment constitute physician-patient communications or “[r]ecords of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician.” Open Records Decision No. 546 at 1 (1990). Upon review, we find the information we have marked consists of records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient’s medical records. Accordingly, the district must

withhold the medical records we have marked under section 552.101 of the Government Code in conjunction with the MPA.²

Section 552.101 of the Government Code also encompasses section 261.201 of the Family Code, which provides, in relevant part:

(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). The district states the submitted information was used or developed in investigations of alleged or suspected child abuse. 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). The district claims the information was obtained from the Dallas Police Department (“DPD”), the Department of Family and Protective Services (“DFPS”), or the district’s police department (the “department”). The district also states it has on staff an employee who is shared with DFPS to receive and investigate child abuse claims.

Upon review, we find the information we have marked consists of a report of alleged or suspected abuse or neglect under section 261.201(a)(1) of the Family Code. *See id.* §§ 261.001(1) (defining “abuse” for purposes of chapter 261 of the Family Code), 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). Accordingly, 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.³

We are unable to determine, however, whether the submitted “suspected child abuse reporting form” (the “reporting form”) was produced to DPD, DFPS, or the department.

²As our ruling is dispositive, we need not consider your remaining arguments against disclosure of this information.

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

Thus, we must rule conditionally. If the reporting form was produced to DPD, DFPS, or the department, the reporting form consists of information used or developed in an investigation of alleged or suspected child abuse under chapter 261 that must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. If the reporting form was not produced to DPD, DFPS, or the department, then the reporting form does not consist of information used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code and may not be withheld on the basis of section 261.201(a)(2). In that instance, however, we find portions of the reporting form, which we have marked, consist of the identifying information of a person who reported alleged or suspected abuse or neglect to CPS and are within the scope of section 261.201(a)(1) of the Family Code. Therefore, if the reporting form was not produced to DPD, DFPS, or the department, the district must withhold the information we have marked within the report form under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code.⁴ However, in either instance, we find the remaining information was not obtained from DPD, DFPS, or the department, but instead relates to an administrative investigation by the district. Therefore, none of the remaining information is confidential under section 261.201 of the Family Code and none of it may be withheld 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. 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 of the Government Code in conjunction with section 261.101(d) of the Family Code.

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 or embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has 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. Upon review, we find some of the remaining information at issue identifies a juvenile victim of abuse. Accordingly, the district must withhold the identifying information of the juvenile victim of abuse contained in the remaining information, to include the child victim's name, student identification number,

⁴As our ruling is dispositive, we do not address your other arguments to withhold this information.

home address and telephone number, and the name of the child victim's mother, under section 552.101 of the Government Code in conjunction with common-law privacy.⁵

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 the 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 the investigation, but do not report a violation of law are not informants for purposes of section 552.135 of the Government Code.

The district claims the remaining information reveals the identities of informers who reported possible violations of criminal and civil laws. Upon review, we find the district must withhold the identifying information of the informers we have indicated under section 552.135 of the Government Code. However, we find the district has not demonstrated the remaining information identifies an informer for the purposes of section 552.135. Therefore, we find the district may not withhold the remaining information under section 552.135 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See id.* § 552.137(a)-(c). We note the e-mail address we have marked is not subject to subsection (c), and you do not indicate the owner of the e-mail address has consented to release of her e-mail address. Thus, we find the district must withhold the e-mail address we have marked under section 552.137 of the Government Code.

In summary, to the extent the district determines the requested information consists of "education records" that must be withheld under FERPA, the district must dispose of any such information in accordance with FERPA, rather than the Act. The district must withhold

⁵As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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. If the reporting form was produced to DPD, DFPS, or the department, the district must withhold it under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. If the reporting form was not produced to DPD, DFPS, or the department, the district must withhold the information we have marked within the reporting form under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code, but must release the remainder of the reporting form. The district must withhold the information that identifies the juvenile victim of abuse under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the identifying information of the informers we have indicated under section 552.135 of the Government Code. The district must withhold the e-mail address we have marked under section 552.137 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,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/som

Ref: ID# 570685

Enc. Submitted documents

c: Requestor
(w/o enclosures)