



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 28, 2016

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue, Box 74
Dallas, Texas 75204

OR2016-14628

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# 616395 (ORR No. 15156).

The Dallas Independent School District (the "district") received a request for information pertaining to a named individual. You state the district will provide the requestor with some of the responsive 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.

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" is

¹A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

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 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 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 an investigation 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 submitted information was not obtained from DPD, DFPS, or the department, but instead relates to an administrative investigation by the district. We are unable to determine, however, whether the information we have marked was produced to DPD, DFPS, or the department. Thus, we must rule conditionally. If the information we have marked was produced to DPD, DFPS, or the department, the marked information 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 marked information was not produced to DPD, DFPS, or the department, then the marked information 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 information at issue, which we have marked, consist of the identifying information of a person who reported alleged or suspected abuse or neglect to Child Protective Services and are within the scope of section 261.201(a)(1) of the Family Code. Therefore, if the information we have marked was not produced to DPD, DFPS, or the department, the district must withhold the identifying information of the reporting party we have marked within the information at issue under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. 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's name, student identification numbers, addresses

and telephone numbers, and parents' or grandparents' names, under section 552.101 of the Government Code in conjunction with common-law privacy.²

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. 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. Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. Further, individuals who provide information in the course of an investigation, but do not report a violation of law are not informers for purposes of section 552.135. You state portions of the remaining information at issue identify students and employees who reported alleged violations of criminal and civil laws. Upon review, we find you have not demonstrated any of the remaining information identifies an informer who reported a possible violation of civil, criminal, or regulatory law for purposes of section 552.135. Therefore, the district may not withhold any of the remaining information on that basis.

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. If the information we have marked was produced to DPD, DFPS, or the department, the district must withhold the marked information under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. If the marked information was not produced to DPD, DFPS, or the department, the district must withhold the identifying information of the reporting party we have marked 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 information at issue. 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 release the remaining information.

²As our ruling is dispositive, we need not address the district's remaining argument against disclosure of this 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,

A handwritten signature in black ink that reads "Britni Ramirez". The signature is written in a cursive, flowing style.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/dls

Ref: ID# 616395

Enc. Submitted documents

c: Requestor
(w/o enclosures)