



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 9, 2016

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

OR2016-17939

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# 622062 (File No. 2016-070).

The Plano Independent School District (the "district"), which you represent, received one request from two requestors for seven categories of information related to a named employee involved in a specified incident.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.135 of the Government Code. Additionally, you state release of the submitted information may implicate the interests of a third party. Accordingly, you state, and provide documentation showing, you notified the third party of the request for information pursuant to section 552.304 of the Government Code.<sup>2</sup> *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released). We have considered the exceptions you claim and reviewed the submitted representative sample of information.

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<sup>1</sup>The district states it sought and received clarification of the request. *See* Gov't Code § 552.222(b) (providing that if request for information is unclear, governmental body may ask requestor to clarify the request); *see also* *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 overbroad 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).

<sup>2</sup>As of the date of this letter, we have not received any comments from the interested third party.

Initially, we note the district has not submitted information responsive to the second, third, and fourth categories of information requested. Although you state the district submitted a representative sample of information, the submitted information is not representative of all of the information requested. Please be advised this open records letter applies to only the types of information you have submitted for our review. Therefore, this ruling does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office. *See Gov't Code* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301 of the Government Code, information at issue is presumed to be public). Thus, to the extent the information related to the second, third, and fourth categories of the requested information were maintained by the district on the date the district received the request for information, we assume the district has released such information. If not, the district must do so at this time. *See id.* §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible).

Next, we note the requestors excluded from their request any information subject to section 552.102 of the Government Code. Thus, this information, which we have marked, is not responsive to the request for information. This ruling does not address the public availability of any information that is not responsive to the request, and the district is not required to release this information in response to this request.<sup>3</sup>

We also 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.<sup>4</sup> 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 C.F.R. § 99.3 (defining "personally identifiable information"). You have 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, other than to note the requestors, as parents, have a right under FERPA to their child's education records, and this right of access prevails over claims under sections 552.101 and 552.135 of the Government Code. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; *see also Equal Employment Opportunity Comm'n v. City of Orange Tex.*, 905 F. Supp. 381, 382 (E.D. Tex.

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<sup>3</sup>As we are able to make the determination, we need not address your argument against disclosure of this information.

<sup>4</sup>A 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>.

1995) (holding FERPA prevails over inconsistent provision of state law). Such determinations under FERPA must be made by the educational authority in possession of the education records. We will consider the district's claimed exceptions to the extent the requestors do not have a right of access to the submitted information under FERPA.

Section 552.101 of the Government Code 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. We note an individual's name, education, prior employment, and personal information are not ordinarily private information subject to common-law privacy. *See* Open Records Decision Nos. 554 (1990), 448 (1986). Upon review, we find the district has failed to demonstrate any of the responsive information is highly intimate or embarrassing and not of legitimate public concern. Thus, the district may not withhold any portion of the responsive information under section 552.101 in conjunction with common-law privacy.

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].

Gov't Code § 552.135(a), (b). 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). We note section 552.135 protects an informer's identity, but it does not generally encompass protection for witnesses or witness statements.

You state the information at issue identifies employees who reported an alleged violation of the Code of Ethics and Standard Practices for Texas Educators, section 247.2 of title 19 of the Texas Administrative Code. Based on your representation and our review, we conclude the district must withhold the information we have marked under section 552.135 of the Government Code. However, we conclude the district has failed to demonstrate any of the remaining responsive information reveals the identity of an informer for purposes of section 552.135. Therefore, the district may not withhold any of the remaining responsive

information on that ground. As no other exceptions to disclosure have been raised, the remaining responsive information must be released.<sup>5</sup>

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](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,



Kavid Singh  
Assistant Attorney General  
Open Records Division

KVS/bhf

Ref: ID# 622062

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>5</sup>We note the requestors generally have a right of access to some information being released pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (“[a] person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Therefore, if the district receives a request for this information from another requestor, the district must seek another ruling from this office.