



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 18, 2016

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue, Box 4  
Dallas, Texas 75204

OR2016-23345

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# 630991 (ORR# 15500).

The Dallas Independent School District (the "district") received a request for information pertaining to a named individual. You state you will release some information to the requestor. 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.<sup>1</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.

---

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

*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. *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 your arguments against disclosure of the submitted information.

We note some of the submitted information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2016-00659 (2016). We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the district must continue to rely on Open Records Letter No. 2016-00659 as a previous determination and withhold or release the information we have marked in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

Section 552.101 of the Government Code excepts from public 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 of the Family Code, which provides, in part, the following:

(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 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 id.* §§ 101.003(a) (defining “child” for purposes of chapter 261), 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code). You claim 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). You state the information at issue was obtained from the Dallas

Police Department (“DPD”), 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 the information we have marked was used or developed in an investigation of alleged or suspected child abuse under chapter 261 and must be withheld under section 552.101 in conjunction with section 261.201(a)(2). However, we find most of the remaining information was not obtained from DPD, DFPS, or the department, but instead relates to administrative investigations by the district. We are unable to determine whether the remaining Suspected Child Abuse Reporting Forms were produced to DPD, DFPS, or the department. Accordingly, we rule in the alternative. To the extent the Suspected Child Abuse Reporting Forms were produced to DPD, DFPS, or the department, we find this information consists of information used or developed in an investigation of alleged or suspected child abuse under chapter 261 and must be withheld under section 552.101 in conjunction with section 261.201(a)(2).

In the event the Suspected Child Abuse Reporting Forms were not produced to DPD, DFPS, or the department, then this 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) of the Family Code. In this instance, however, we find portions of the reporting forms, which we have marked, consist of the identifying information of a person who reported alleged or suspected abuse or neglect to Child Protective Services. This information is within the scope of section 261.201(a)(1). Therefore, the district must withhold the information we have marked in the reporting forms under section 552.101 of the Government Code in conjunction with section 261.201(a)(1). However, none of the remaining information is confidential under section 261.201 and the district may not withhold it under section 552.101 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 consists of the identifying information of an individual who made a report under chapter 261 of the Family Code. Therefore, the district may not withhold the remaining information under section 552.101 in conjunction with section 261.101.

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, such as the child victim's name, identification number, home address and telephone number, and the name of the child victim's parent or guardian, under section 552.101 in conjunction with common-law privacy.<sup>2</sup>

Section 552.117(a)(1) of the Government Code applies to records a governmental body holds in an employment capacity and 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).<sup>3</sup> 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, a school district may only withhold under section 552.117 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 on behalf of a current or former official or employee only if the individual made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the individuals whose information is at issue timely requested confidentiality 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) for those employees who did not make a timely election to keep the information confidential.

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

---

<sup>2</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>3</sup>The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. We note section 552.135 protects an informer's identity, but it does not generally encompass protection for witnesses or witness statements.

You claim the remaining information reveals the identity of an informer who reported possible violations of criminal laws. However, we find you have not demonstrated the remaining information identifies an informer for the purposes of section 552.135 of the Government Code. Therefore, we find the district may not withhold the remaining information under section 552.135.

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 continue to rely on Open Records Letter No. 2016-00659 as a previous determination and withhold or release the information we have marked in accordance with that ruling. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Government Code. If the remaining Suspected Child Abuse Reporting Forms were produced to DPD, DFPS, or the department, the district must withhold the remaining Suspected Child Abuse Reporting Forms in their entirety under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. If the remaining Suspected Child Abuse Reporting Forms were not produced to DPD, DFPS, or the department, 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, withhold the identifying information of the juvenile victim under section 552.101 of the Government Code in conjunction with common-law privacy, and release the remaining portions of the Suspected Child Abuse Reporting Forms. In either case, the district must (1) withhold the identifying information of the juvenile victim under section 552.101 of the Government Code in conjunction with common-law privacy; (2) withhold the information we have marked under section 552.117(a)(1) of the Government Code if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024 of the Government Code; and (3) release any 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](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 "Cole Hutchison". The signature is written in a cursive style with a large initial "C".

Cole Hutchison  
Assistant Attorney General  
Open Records Division

CH/bhf

Ref: ID# 630991

Enc. Submitted documents

c: Requestor  
(w/o enclosures)