



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 26, 2016

Ms. Leticia D. McGowan  
Assistant General Counsel  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204

OR2016-23955

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# 631816 (ORR# 15514).

The Dallas Independent School District (the "district") received a request for information pertaining to seventeen named former educators. You state you will provide some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.107, and 552.135 of the Government Code and privileged under Texas Rule of Evidence 503.<sup>1</sup> We have considered the submitted arguments and reviewed the submitted information.

Initially, we note some of the submitted information, which we have marked, is not responsive to the instant request because it does not pertain to any of the named former educators. This ruling does not address the public availability of any information that is not

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<sup>1</sup>Although you raise section 552.101 of the Government Code in conjunction with section 552.107 of the Government Code, Texas Rule of Evidence 503, and Texas Rule of Civil Procedure 192.5, this office has concluded section 552.101 does not encompass other exceptions found in the Act or discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Further, although you also raise section 552.111 and Texas Rule of Civil Procedure 192.5 for the submitted information, you provide no arguments to support these claims. Therefore, we assume you no longer assert these arguments. *See* Gov't Code §§ 552.301, .302.

responsive to the request and the district is not required to release such information in response to this request.

Next, 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>2</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”); *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 responsive information.

We must address the district’s procedural obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See* Gov’t Code § 552.301(b). The district received the request for information on August 3, 2016. You inform us the district was closed for business on August 5, 2016. Thus, the district’s ten-business-day deadline was August 18, 2016. Although you raised sections 552.101, 552.102, and 552.135 of the Government Code within the ten-business-day time period as required by section 552.301(b), you did not raise section 552.107(1) of the Government Code or Texas Rule of Evidence 503 until after the ten-business-day deadline had passed. Thus, the district failed to comply with section 552.301 of the Government Code with respect to its claims under section 552.107(1) of the Government Code and Texas Rule of Evidence 503.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the requirements of section 552.301 results in the legal presumption that the information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.*

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<sup>2</sup>A copy of this letter may be found on the Office of the Attorney General’s website at <http://www.texasattorneygeneral.gov/open/20060725usdoe.pdf>.

§ 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). We note section 552.107(1) is a discretionary exception to disclosure that protects a governmental body's interests and may be waived, and Texas Rule of Evidence 503 is a privilege that may also be waived. *See* Open Records Decision Nos. 676 at 12 (2002) (claim of attorney-client privilege under section 552.107(1) or rule 503 does not provide compelling reason to withhold information under section 552.302 if it does not implicate third-party rights), 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (waiver of discretionary exceptions). Therefore, in failing to timely raise section 552.107(1) of the Government Code and Texas Rule of Evidence 503, the district has waived its claims under these provisions and may not withhold any of the responsive information on those bases. However, we will consider your timely-raised arguments under sections 552.101, 552.102, and 552.135 of the Government Code.

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 of the Government Code encompasses information other statutes make confidential. You raise section 552.101 in conjunction with the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), 42 U.S.C. §§ 1320d-1320d-8. At the direction of Congress, the Secretary of Health and Human Services (“HHS”) promulgated regulations setting privacy standards for medical records, which HHS issued as the Federal Standards for Privacy of Individually Identifiable Health Information. *See* Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d-2 (Supp. IV 1998) (historical & statutory note); Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. pts. 160, 164 (“Privacy Rule”); *see also* Attorney General Opinion JC-0508 at 2 (2002). These standards govern the releasability of protected health information by a covered entity. *See* 45 C.F.R. pts. 160, 164. Under these standards, a covered entity may not use or disclose protected health information, except as provided by parts 160 and 164 of the Code of Federal Regulations. *See id.* § 164.502(a).

This office addressed the interplay of the Privacy Rule and the Act in Open Records Decision No. 681 (2004). In that decision, we noted section 164.512 of title 45 of the Code of Federal Regulations provides that a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law and the use or disclosure complies with, and is limited to, the relevant requirements of such law. *See id.* § 164.512(a)(1). We further noted the Act “is a mandate in Texas law that compels Texas governmental bodies to disclose information to the public.” *See* ORD 681 at 8; *see also* Gov't Code §§ 552.002, .003, .021. We, therefore, held the disclosures under the Act come within section 164.512(a). Consequently, the Privacy Rule does not make information confidential

for the purpose of section 552.101 of the Government Code. *See Abbott v. Tex. Dep't of Mental Health & Mental Retardation*, 212 S.W.3d 648 (Tex. App.—Austin 2006, no pet.); ORD 681 at 9; *see also* Open Records Decision No. 478 (1987) (as general rule, statutory confidentiality requires express language making information confidential). Thus, because the Privacy Rule does not make information that is subject to disclosure under the Act confidential, the district may not withhold any portion of the information at issue on this basis.

Section 552.101 of the Government Code encompasses information protected by other statutes. Section 21.355 of the Education Code provides, in relevant part, “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). The Third Court of Appeals 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.” *Abbott v. North East Indep. Sch. Dist.*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4. Further, in Open Records Decision No. 643, we determined an “administrator” for purposes of section 21.355 means a person who is required to, and does in fact, hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code, and is performing the functions as an administrator, as that term is commonly defined, at the time of the evaluation. *Id.* We note section 21.355 does not apply to evaluations of teacher interns. *See id.* at 5 (concluding teacher interns, trainees, and educational aides are not “teachers” for the purposes of section 21.355).

You contend portions of the responsive information consist of confidential evaluations of the named educators by the district. You inform us the named educators at issue were certified as teachers or administrators by the State Board of Educator Certification and were acting as teachers or administrators at the time the evaluations were prepared. Accordingly, with the exception of the information we have marked for release, the district must withhold the information you indicated and we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.<sup>3</sup> However, the remaining information at issue consists of employees’ replies and rebuttals to written reprimands, self-evaluation forms, or does not evaluate any employee for purposes of section 21.355. Thus, we find you have failed to demonstrate the remaining information at issue consists of documents evaluating the performance of a teacher or administrator for purposes of

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

section 21.355 of the Education Code. Accordingly, none of the remaining responsive information may be withheld under section 552.101 of the Government Code on that basis.

Section 552.101 of the Government Code also encompasses section 261.201 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 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 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 chapter 261 of the Family Code). You claim portions of the remaining responsive information are 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 some of the information at issue was produced by the department or DFPS and consists of information used or developed in investigations of alleged or suspected child abuse under chapter 261. Accordingly, this information, which we have marked, must be withheld under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code.<sup>4</sup> However, we are unable to determine whether the submitted Follow-Up Child Abuse Reporting Forms (the “reporting forms”) were produced to DPD, DFPS, or the department. Accordingly, we must rule conditionally. If the 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

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

abuse under chapter 261 and must be withheld in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code.

In the event the 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). In this instance, however, we find portions of the reporting forms, as well as portions of the remaining responsive information, which we have marked, consist of the identifying information of a person who reported alleged or suspected abuse or neglect to the Child Protective Services division of DFPS. We find this information 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.<sup>5</sup> The remaining information at issue was not obtained from DPD, DFPS, or the department, but instead relates to administrative investigations by the district. Thus, we find you have failed to demonstrate any of the remaining information at issue was used or developed in an investigation of alleged or suspected child abuse, or consists of a report of alleged or suspected abuse or neglect under chapter 261 of the Family Code. Accordingly, none of the remaining responsive 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 responsive information identifies an individual who made a report under chapter 261 of the Family Code. Therefore, the district may not withhold any of the remaining responsive information under section 552.101 of the Government Code in conjunction with section 261.101 of the Family Code.

Section 552.101 of the Government Code also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997, are confidential under section 58.007. *Id.* § 58.007(c). The relevant language of section 58.007 reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

*Id.* For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). Section 58.007(c) is not applicable to information that relates to a juvenile as a complainant, victim, witness, or other involved party and not as a suspect or offender. Upon review, we find you have not demonstrated any of the remaining responsive information involves a juvenile suspect or offender for purposes of section 58.007. Accordingly, the district may not withhold the remaining responsive information under section 552.101 of the Government Code in conjunction with section 58.007 of the Family Code.

Section 552.101 of the Government Code also encompasses the Family and Medical Leave Act (the “FMLA”). *See* 29 U.S.C. §§ 2601 *et seq.* Section 825.500 of chapter V of title 29 of the Code of Federal Regulations identifies the record-keeping requirements for employers that are subject to the FMLA. Subsection (g) of section 825.500 states:

[r]ecords and documents relating to medical certifications, recertifications or medical histories of employees or employees’ family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files. . . . If the [Americans with Disabilities Act (the “ADA”)], as amended, is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements . . . , except that:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

(2) First aid and safety personnel may be informed (when appropriate) if the employee’s physical or medical condition might require emergency treatment; and

(3) Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

29 C.F.R. § 825.500(g). Upon review, we find the information we have marked is confidential under section 825.500 of title 29 of the Code of Federal Regulations. Further, we find none of the release provisions of the FMLA apply to this information. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the FMLA.<sup>6</sup> However, the district has failed to demonstrate the FMLA applies to any of the remaining information at issue. Therefore, the district may not withhold the remaining responsive information under section 552.101 in conjunction with the FMLA.

Section 552.101 of the Government Code also encompasses the Medical Practice Act (“MPA”), subtitle B of title 3 of the Occupations Code, which governs release of medical records. *See* Occ. Code §§ 151.001-168.202. 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.

*Id.* § 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). Upon review, we find the information we have marked constitutes 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

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<sup>6</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

obtained from a patient's medical records. Accordingly, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. However, we find you have not demonstrated the remaining information at issue consists of medical records for purposes of the MPA, and the district may not withhold the remaining responsive information under section 552.101 on that basis.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court has held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Upon review, we find the district must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

Section 552.102(b) of the Government Code excepts from disclosure higher education transcripts of professional public school employees, but does not except the employee's name, the courses taken, and the degree obtained from disclosure. Gov't Code § 552.102(b); *see also* Open Records Decision No. 526 (1989). Accordingly, with the exception of the employee's name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code.<sup>7</sup>

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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). 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. This office has also found personal financial information not relating to a financial transaction between an individual and a governmental body is generally excepted from required public disclosure under common-law privacy. *See* Open Records Decision Nos. 600 (1992) (finding personal financial information to include designation of beneficiary of employee's retirement benefits and optional insurance coverage; choice of particular insurance carrier; direct deposit authorization; and forms allowing employee to allocate pretax compensation to group insurance, health care, or

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<sup>7</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

dependent care), 545 (1990) (deferred compensation information, participation in voluntary investment program, election of optional insurance coverage, mortgage payments, assets, bills, and credit history), 523 (1989) (common-law privacy protects credit reports, financial statements, and other personal financial information), 373 (1983) (sources of income not related to financial transaction between individual and governmental body protected under common-law privacy). However, there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* ORDs 600 at 9 (information revealing employee participates in group insurance plan funded partly or wholly by governmental body is not excepted from disclosure), 545 (financial information pertaining to receipt of funds from governmental body or debts owed to governmental body not protected by common-law privacy); *see also* Attorney General Opinion GA-0572 at 4 (2007) (public employee's net salary protected by common-law privacy, but gross salary is not). We further note the public generally has a legitimate interest in information that relates to public employment and public employees. *See* Open Records Decision Nos. 542 (1990), 470 at 4 (1987), 444 at 5-6 (1986), 432 at 2 (1984). A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (finding significant privacy interest in compilation of individual's criminal history by recognizing distinction between public records found in courthouse files and local police stations and compiled summary of criminal history information). Furthermore, we find a compilation of a private citizen's criminal history is generally not of legitimate concern to the public.

Under the common-law right of privacy, an individual has a right to be free from the publicizing of private affairs in which the public has no legitimate concern. *Indus. Found.*, 540 S.W.2d at 682. In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.<sup>8</sup> *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at \*3.

Upon review, we find some of the remaining responsive information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we have marked, all identifiable public citizens' dates of

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<sup>8</sup>Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

birth, and the identifying information of the juvenile victims of abuse or neglect, including the children's names, student identification numbers, addresses, and parents' names, under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>9</sup> However, we find the remaining responsive information either pertains to an individual who has been de-identified and whose privacy interests are, thus, protected, or is not highly intimate or embarrassing information or is of legitimate public interest. Therefore, none of the remaining responsive information may be withheld under section 552.101 of the Government Code 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 some of the remaining responsive information identifies students and employees who reported alleged violations of criminal and civil laws. Upon review, we find a portion of the remaining responsive information identifies an individual who reported a possible violation of law for purposes of section 552.135. The district must withhold this information, which we have marked, under section 552.135 of the Government Code. However, we find the district has failed to demonstrate any of the remaining responsive information reveals the identity of an informer for the purposes of section 552.135 of the Government Code. Therefore, the district may not withhold the remaining responsive information on that ground.

Section 552.117(a)(1) of the Government Code excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government

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<sup>9</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Code, except as provided by section 552.024(a-1).<sup>10</sup> *See id.* §§ 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, the 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 item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See Open Records Decision No. 530 at 5 (1989)*. Thus, information may only be withheld under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See Open Records Decision No. 506 at 5-6 (1988)* (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). Therefore, if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, if the individuals whose information is at issue did not timely request confidentiality under section 552.024 or the cellular telephone service is paid for by a governmental body, the district may not withhold this information under section 552.117(a)(1).

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 Gov’t Code* § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Upon review, we find the district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

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<sup>10</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

Section 552.147(a-1) of the Government Code provides, “[t]he social security number of an employee of a school district in the custody of the district is confidential.” *Id.* § 552.147(a-1). Thus, section 552.147(a-1) makes the social security numbers of school district employees confidential, without such employees being required to first make a confidentiality election under section 552.024 of the Government Code. *See id.* § 552.024(a-1) (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). Reading sections 552.024(a-1) and 552.147(a-1) together, we conclude that section 552.147(a-1) makes confidential the social security numbers of both current and former school district employees. Accordingly, the district must withhold the social security numbers we have marked under section 552.147(a-1) of the Government Code.

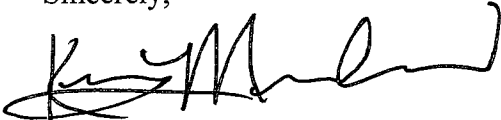
In summary, with the exception of the information we have marked for release, the district must withhold the information you indicated and we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold the information we marked under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(2) of the Family Code. To the extent the reporting forms we marked were produced to DPD, DFPS, or the department, this information must be withheld under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(2) of the Family Code. In the event the reporting forms were not produced to DPD, DFPS, or the department, the district must withhold the information we marked in the reporting forms under section 552.101 of the Government Code in conjunction with subsection 261.201(a)(1) of the Family Code. In either case, the district must withhold the additional information we marked under 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the FMLA. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with the MPA. The district must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. With the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code. The district must withhold the information we have marked, all identifiable public citizens’ dates of birth, and the identifying information of the juvenile victims of abuse or neglect under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the information we have marked under section 552.135 of the Government Code. To the extent the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and the cellular telephone service is not paid for by a governmental body, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. The district must withhold the personal e-mail address we have marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district must withhold the social security numbers we have marked under

section 552.147(a-1) of the Government Code. The district must release the remaining responsive 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, appearing to read 'Kenny Moreland', written over a horizontal line.

Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/akg

Ref: ID# 631816

Enc. Submitted documents

c: Requestor  
(w/o enclosures)