



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2016

Ms. Ylise Janssen
General Counsel
Austin Independent School District
1111 West Sixth Street, Suite A240
Austin, Texas 78703

OR2016-24529

Dear Ms. Janssen:

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# 633031.

The Austin Independent School District (the "district") received a request for e-mails sent by a named individual to district employees during a specified time. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit a state educational agency or institution 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 education 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"). In this

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>

instance, you have submitted redacted and unredacted education records for our review. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to any of the submitted records, other than to note the requestor has a right of access to her own children's education records and her right of access prevails over claims under section 552.101 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. 1995) (holding FERPA prevails over inconsistent provision of state law). Such determinations under FERPA must be made by the educational authority in possession of such records. However, we will address the district's claimed exception to the extent the requestor does not have a right of access to her own children's education records within the submitted information under FERPA.

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 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. Upon review, we find the district has failed to demonstrate the information it marked is highly intimate or embarrassing and of no legitimate public interest. Thus, the district may not withhold any portion of the submitted information under section 552.101 in conjunction with common-law privacy.

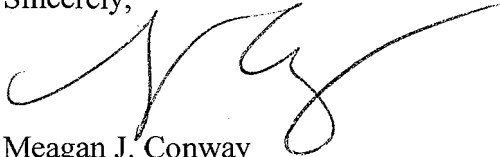
Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c).² *See* Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the district must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. 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.

²The 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).

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,



Meagan J. Conway
Assistant Attorney General
Open Records Division

MJC/akg

Ref: ID# 633031

Enc. Submitted documents

c: Requestor
(w/o enclosures)