



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2016

Mr. Fred A. Stormer
Counsel for Amarillo Independent School District
Underwood Attorneys at Law
P.O. Box 9158
Lubbock, Texas 79105

OR2016-25000A

Dear Mr. Stormer:

This office issued Open Records Letter No. 2016-25000 (2016) on November 9, 2016. We have determined the prior ruling should be corrected. *See* Gov't Code §§ 552.306, .352. Accordingly, we hereby withdraw the prior ruling. This decision is substituted for Open Records Letter No. 2016-25000 and serves as the correct ruling. *See generally id.* § 552.011 (Office of Attorney General may issue decision to maintain uniformity in application, operation, and interpretation of Public Information Act (the "Act"), chapter 552 of the Government Code). This ruling was assigned ID# 643787.

The Amarillo Independent School District (the "district"), which you represent, received two requests from different requestors for the personnel records of a named employee who is deceased. The district informs us it is redacting some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ We also understand the district is withholding information under

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

section 552.024 of the Government Code and Open Records Decision No. 684 (2009).² The district states it has released some of the requested information, but claims some of the submitted information is excepted from disclosure under sections 552.101, 552.135, and 552.147 of the Government Code. We have considered the claimed exceptions and reviewed 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. This section encompasses section 261.201(a) of the Family Code, which provides as follows:

[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). The district is not an agency authorized to conduct a chapter 261 investigation. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, Exhibit C consists of reports of alleged or suspected abuse or neglect made to and information obtained from the Texas Department of Family and Protective Services (the “department”). *See id.* §§ 101.003(a) (defining “child” for purposes of section 261.201), 261.001(1) (defining “abuse” for purposes of section 261.201). Upon review, we find the information is within the scope of section 261.201 of the Family Code. The district does not indicate the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such rule exists. Given that assumption, the district must withhold Exhibit C under section 552.101 of the Government Code in

²Section 552.024(c)(2) of the Government Code authorizes a governmental body to redact information protected by section 552.117(a)(1) of the Government Code without the necessity of requesting a decision under the Act if the current or former employee or official to whom the information pertains timely chooses not to allow public access to the information. *See Gov’t Code* § 552.024(c)(2). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of seeking a decision from this office.

conjunction with section 261.201(a) of the Family Code.³ See Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code. Section 21.355(a) provides “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). Additionally, the Third Court of Appeals has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355 as it “reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides for further review.” *Abbott v. N. E. 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. See Open Records Decision No. 643 at 3 (1996). We also determined a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. See *id.* at 4.

The district asserts the remaining information evaluates the performance of a teacher who held the appropriate certificate for the purpose of section 21.355. Upon review, we find some of the remaining information is confidential under section 21.355. Therefore, the district must withhold this information, which we have marked, under section 552.101 of the Government Code in conjunction with section 21.355. However, we find the district has not established any of the remaining information consists of “[a] document evaluating the performance of a teacher or administrator” as contemplated by section 21.355. Thus, the district has not established the remaining information is confidential under section 21.355, and may not withhold it under section 552.101 on that ground.

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

³As our ruling is dispositive, we do not address the other arguments of the district to withhold this information.

office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). However, although section 552.135 protects an informer's identity, it does not generally encompass protection for witness statements. The district represents Exhibit E contains identifying information of employees who reported alleged violations of sections 21.12 and 22.011 of the Penal Code to the Texas Education Agency. Upon review, we conclude the district must withhold the information we have marked in Exhibit E under section 552.135 of the Government Code. However, we find the district has not demonstrated any of the remaining information at issue identifies an informer for purposes of section 552.135. Therefore, the district may not withhold any of the remaining information on that basis.

Section 552.117(a)(1) of the Government Code is applicable to some of the remaining information.⁴ Section 552.117(a)(1) 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). Gov't Code § 552.117(a)(1). 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). Therefore, the district may only withhold information 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 on which the request for this information was made. The district informs us the deceased employee at issue previously elected to withhold certain personal information. Because the protection afforded by section 552.117 includes “current or former” employees, the protection generally does not lapse at death, as it is also intended to protect the privacy of an employee’s family members and emergency contacts. Nevertheless, we note because the protection of social security numbers under section 552.117 is intended to solely protect the privacy of the employee, it lapses at death. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. Civ. App.—Texarkana 1979, writ ref’d n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 147 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded” (quoting Restatement (Second) of Torts § 6521 (1977))); Attorney General Opinions JM-229 (1984) (“the right of privacy lapses upon death”), H-917 (1976) (“We are . . . of the opinion that the Texas courts would follow the almost uniform rule of other jurisdictions that the right of privacy lapses upon death.”); Open Records Decision No. 272 (1981) (“the right of privacy is personal and lapses upon death”). The district must withhold the information we have marked under section 552.117(a)(1) of the Government Code.

The district asserts the social security number of the deceased employee at issue is excepted from release under section 552.147(a-1) of the Government Code, which provides “[t]he

⁴The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body. *See* Open Records Decision Nos. 481 at 2 (1987), 480 at 5 (1987).

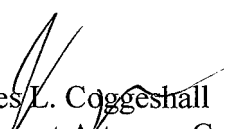
social security number of an employee of a school district in the custody of the district is confidential.” Gov’t Code § 552.147(a-1). However, because the protection of social security numbers under section 552.147(a-1) is also intended to solely protect the privacy of the employee, it lapses at death. *See Moore*, 589 S.W.2d at 491; *see also* Attorney General Opinions JM-229; H-917. Therefore, the district may not withhold the submitted social security number of the deceased employee at issue pursuant to section 552.147(a-1).

To conclude, the district must withhold the following: (1) Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (2) the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; (3) the information we have marked under section 552.117(a)(1) of the Government Code; and (4) the information we have marked under section 552.135 of the Government Code. 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.

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,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/bw

Ref: ID# 643787

Enc. Submitted documents

c: Requestor
(w/o enclosures)