



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 15, 2016

Mr. Matthew M. Coleman
Counsel for the Hawley Independent School District
Eichelbaum, Wardell, Hansen, Powell & Mehl, P.C.
4201 West Parmer Lane, Suite A-100
Austin, Texas 78727

OR2016-27807

Dear Mr. Coleman:

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# 638126.

The Hawley Independent School District (the "district"), which you represent, received a request for all records related to requestor's child and reports related to requestor's child and three named teachers. You state you have released some information. You state the district has redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You also state the district redacted social security numbers pursuant to section 552.147(b) of the Government Code, and we understand you have redacted information subject to section 552.117(a)(1) of the

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>.

Government Code as permitted by section 552.024(c) of the Government Code.² You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, and 552.135 of the Government Code.³ We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state Exhibit B was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-08206 (2016). In that ruling, we determined the district (1) must withhold certain information under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code; (2) must withhold certain information under section 552.101 of the Government Code in conjunction with section 21.355(a) of the Education Code; (3) must withhold certain information under sections 552.102(a) and 552.102(b) of the Government Code; (4) may withhold some information under section 552.107(1) of the Government Code; (5) must withhold the information we marked under section 552.117(a)(1) of the Government Code; (6) must withhold the motor vehicle record information under section 552.130 of the Government Code; (7) must withhold the marked e-mail address under section 552.137 of the Government Code, unless the owner affirmatively consents to its release; and (8) must release the remaining information. There is no indication the law, facts, and circumstances on which the prior ruling was based have changed. Accordingly, we conclude the district must continue to rely on Open Records Letter No. 2016-08206 as a previous determination and withhold or release the responsive information in Exhibit B 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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). We will address your arguments for the remaining submitted information not subject to Open Records Letter No. 2016-08206.

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 information made confidential by other statutes, such as section 261.201 of the Family Code, which provides, in relevant part:

²Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person’s social security number from public release without the necessity of requesting a decision from this office under the Act. Gov’t Code § 552.147(b). Section 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 id.* § 552.024(c)(2).

³Although the district raises section 552.103 of the Government Code, it makes no arguments to support this exception. Therefore, we assume the district has withdrawn its claim this section applies to the submitted information. *See* Gov’t Code §§ 552.301, .302.

(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 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 some of 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 or neglect investigations). However, you state the information you have marked was used in investigations of alleged child abuse or neglect conducted by the Child Protective Services Division of the Texas Department of Family and Protective Services. This agency is authorized to conduct investigations under chapter 261. Based on your representations and our review, we find Exhibit D and the information you marked in Exhibit C was used or developed in investigations under chapter 261 of the Family Code, so as to fall within the scope of section 261.201(a). We note section 261.201(k) permits the investigating agency to release information relating to an investigation under chapter 261 to a parent of the child who was the subject of the alleged or suspected abuse or neglect, unless the parent is alleged to have committed the abuse or neglect. *See id.* § 261.201(k). Although, in this instance, the requestor is a parent of the child concerned, section 261.201(k) is not applicable because the district is not the agency that conducted the investigation. Accordingly, the district must withhold Exhibit D in its entirety and the information you marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.

Section 552.101 of the Government Code also encompasses section 21.355 of the Education Code, which provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355. 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 an administrator. *See Open Records Decision No. 643 (1996)*. In *Open Records Decision No. 643*, we 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. Additionally, the courts have 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.” *North East Indep. Sch. Dist. v. Abbott*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.).

You contend the information you marked under section 21.355 of the Education Code evaluates the performance of a certified teacher. You state, and provide documentation demonstrating, the teacher at issue was required to and did hold the appropriate certification under chapter 21 of the Education Code at the time of the evaluations. Further, the submitted information demonstrates the teacher at issue was acting as a teacher at the time of the evaluations for the purposes of section 21.355. Based on your representations and our review, we conclude the district must withhold the information you marked under section 552.101 in conjunction with section 21.355(a).

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 this exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.135, .301(e)(1)(A). Additionally, individuals who provide information in the course of an investigation, but do not report a violation of law, are not informants for the purposes of section 552.135 of the Government Code. Thus, section 552.135 protects the identity of an informer but does not protect witness information or statements. You state the information you marked under section 552.135 identifies employees who reported possible violations of section 247.2 of title 19 of the Texas Administrative Code and section 22.04 of the Penal Code. Upon review, we find the information we marked reveals the identity of an informer who reported possible violations of section 247.2 of title 19 of the Texas Administrative Code and section 22.04 of the Penal Code. Thus, the district must withhold the information we marked under section 552.135 of the Government Code. However, we find the district has failed to demonstrate the remaining information you marked reveals an

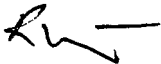
informer for purposes of section 552.135. Therefore, the district may not withhold the remaining information you marked on that basis.

In summary, the district must continue to rely on Open Records Letter No. 2016-08206 as a previous determination and withhold or release the responsive information in Exhibit B in accordance with that ruling. The district must withhold Exhibit D in its entirety and the information you marked in Exhibit C under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The district must withhold the information you marked under section 552.101 in conjunction with section 21.355(a). The district must withhold the information we 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,



Kelly McWethy
Assistant Attorney General
Open Records Division

KSM/eb

Ref: ID# 638126

Enc. Submitted documents

c: Requestor
(w/o enclosures)