



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 29, 2017

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

OR2017-14552

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# 664243 (ORR# 16160).

The Dallas Independent School District (the "district") received a request for records pertaining to the requestor during a specified time. You state the district 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. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You have

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<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>.

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.

Next, we note the submitted information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2017-03448 (2017). In that ruling, we determined (1) if the reporting form at issue was produced to the Dallas Police Department (“DPD”), the Texas Department of Family and Protective Services (“DFPS”), or the district’s police department (the “department”), then the district must withhold the reporting form in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code; (2) if the reporting form was not produced to DPD, DFPS, or the department, then the district must withhold the information we marked in the reporting form under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code; (3) in either case, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the district must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the district must rely on Open Records Letter No. 2017-03448 as a previous determination and withhold or release the identical information 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 that information is or is not excepted from disclosure). To the extent the submitted information is not encompassed by the previous ruling, we will address the arguments against its disclosure.

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 of the Family Code, which provides, in relevant part:

(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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] 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). The district states the submitted information was used or developed in investigations of alleged or suspected child abuse and neglect. 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). The district claims the information was obtained from DPD, DFPS, or the department. The district also states it has on staff an employee who is shared with DFPS to receive and investigate child abuse claims. Upon review, however, we find the submitted information was not obtained from DPD, DFPS, or the department, but instead relates to an administrative investigation by the district. Further, we are unable to determine whether the Suspected Child Abuse Reporting Form was produced to DPD, DFPS, or the department. Accordingly, we rule in the alternative. To the extent the Suspected Child Abuse Reporting Form was 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 Form was 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 form, which we 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 form 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.

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 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.

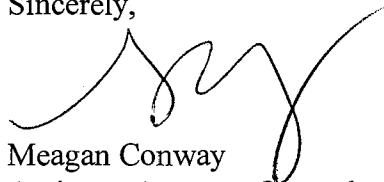
In summary, to the extent the district determines the requested information consists of "education records" that must be withheld under FERPA, the district must dispose of any such information in accordance with FERPA, rather than the Act. To the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the district must rely on Open Records Letter No. 2017-03448 as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the Suspected Child Abuse Reporting Form was produced to DPD,

DFPS, or the department, the district must withhold Suspected Child Abuse Reporting Form in its entirety under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. If the Suspected Child Abuse Reporting Form was not produced to DPD, DFPS, or the department, the district must withhold the information we 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 Form. In either case, the district must withhold the identifying information of the juvenile victim under section 552.101 of the Government Code in conjunction with common-law privacy and 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,



Meagan Conway  
Assistant Attorney General  
Open Records Division

MC/sb

Ref: ID# 664243

Enc. Submitted documents

c: Requestor  
(w/o enclosures)