



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 6, 2017

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

OR2017-15041

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# 665029 (ORR#16183).

The Dallas Independent School District (the "district") received a request for information pertaining to a specified incident. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.135 of the Government Code. We have considered the exceptions you claim 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 consists of the request for information or was created after the date the request was received. This ruling does not address the public availability of any information that is not 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.¹ 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 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.

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 an investigation 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 the Dallas Police Department (“DPD”), the Department of Family and Protective Services (“DFPS”), or the district’s police department (the “department”). The district also states it has on staff an employee who is shared with

¹A copy of this letter may be found on the Office of the Attorney General’s website: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

DFPS to receive and investigate child abuse claims. Additionally, you state, and provide documentation showing, some of the submitted information relates to an active investigation being conducted by the department. Upon review, we find the information we have marked was used or developed in an investigation of alleged or suspected child abuse or neglect under chapter 261 and must be withheld under section 552.101 in conjunction with section 261.201(a)(2).² However, we are unable to determine whether the remaining responsive information was produced to DPD, DFPS, or the department. Accordingly, we rule in the alternative. To the extent the remaining responsive information 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 remaining responsive information 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 remaining responsive information, which we have 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 under section 552.101 of the Government Code in conjunction with section 261.201(a)(1). However, none of the remaining responsive 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 responsive 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 responsive 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*

²As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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 responsive 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.³

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 responsive 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 responsive information under section 552.135.

We note some of the remaining responsive information may be subject to section 552.117 of the Government Code.⁴ Section 552.117(a)(1) of the Government Code excepts from

³As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁴The 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 No. 481 (1987), 480 (1987), 470 (1987).

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 Code. *See id.* § 552.117(a)(1). 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 be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official 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. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employee at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we have marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employee at issue did not timely request confidentiality under section 552.024, the district may not withhold the marked information under section 552.117(a)(1).

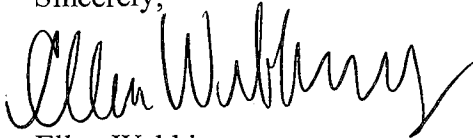
In summary, to the extent the district determines the requested information consists of "education records" that must be withheld under FERPA, the district must dispose of any such information in accordance with FERPA, rather than the Act. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. To the extent the remaining responsive information was produced to DPD, DFPS, or the department, the district must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code. If the remaining responsive information was not produced to DPD, DFPS, or the department, the district must: (1) 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; (2) withhold the identifying information of the juvenile victim under section 552.101 of the Government Code in conjunction with common-law privacy; (3) withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employee whose information is at issue timely requested confidentiality under section 552.024 of the Government Code; and (4) 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](#), 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 "Ellen Webking". The signature is fluid and cursive, with the first name "Ellen" being more prominent.

Ellen Webking
Assistant Attorney General
Open Records Division

EW/eb

Ref: ID# 665029

Enc. Submitted documents

c: Requestor
(w/o enclosures)