



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

August 16, 2017

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

OR2017-18733

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# 671281 (ORR# 16281).

The Dallas Independent School District (the "district") received a request for twenty-six categories of information related to a named district employee. You state you have released 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

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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>.

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 exempts 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). You state 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 DFPS to receive and investigate child abuse claims. 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).<sup>2</sup> However, we are unable to determine whether

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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

some of the remaining information was produced to DPD, DFPS, or the department. Accordingly, we rule in the alternative. To the extent the remaining information we have marked 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 information we have marked 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 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).<sup>3</sup> 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 information protected by section 21.355 of the Education Code, which provides, in relevant part, “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). The Third Court of Appeals has 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.” *Abbott v. North East 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 or administrator. *See* Open Records Decision No. 643 (1996). In Open Records Decision No. 643, we determined for purposes of section 21.355, the word “teacher” means a person who is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

and who is in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See id.* at 4.

Upon review, we find the some of the remaining information consists of confidential evaluations of teachers by the district. We understand the teachers at issue were performing the functions of a teacher at the time of the evaluations. Therefore, provided the teachers held the appropriate certificate under Chapter 21 of the Education Code at the time of the evaluations at issue, the information we have marked is generally confidential under section 21.355 of the Education Code and must be withheld under section 552.101 of the Government Code on that basis. If the teachers at issue did not hold the appropriate certificate under Chapter 21 at the time of the evaluations at issue, this information is not confidential under section 21.355 and may not be withheld under section 552.101 on that basis. We note the requestor's client is one of the employees whose evaluations are at issue. Section 21.352(c) of the Education Code specifically provides that "[e]ach teacher is entitled to receive a written copy of the evaluation promptly on its completion." Educ. Code § 21.352(c); *see id.* § 21.352(a) (prescribing appraisal process and performance criteria each school district shall use). Therefore, to the extent the evaluations we have marked that relate to the requestor's client are the type contemplated in section 21.352, this requestor has a right of access to his client's own evaluations under section 21.352(c) and they may not be withheld from him under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. However, if this requestor does not have a right of access under section 21.352(c) of the Education Code, then provided the requestor's client was required to hold and did hold the appropriate certificate at the time of the evaluations at issue, the district must withhold the evaluations we have marked pertaining to the requestor's client under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.102(a) of the Government Code excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."<sup>4</sup> Gov't Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). Accordingly, the district must withhold the dates of birth we have marked under section 552.102(a) of the Government Code.

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

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<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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. The court of appeals has concluded public citizens' dates of birth are protected by common-law privacy pursuant to section 552.101. *Paxton v. City of Dallas*, No.03-13-00546-CV, 2015 WL 3394061, at \*3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). Upon review, we find some of the remaining responsive information at issue identifies juvenile victims of abuse. Accordingly, the district must withhold the identifying information of the juvenile victims of abuse, such as the child victims' names, identification numbers, home addresses and telephone numbers, and the identifying information of the child victims' parents or guardians, under section 552.101 in conjunction with common-law privacy.<sup>5</sup> We note the submitted information contains dates of birth of individuals who have been de-identified. These individuals' privacy interests are protected, and thus, information pertaining to these individuals may not be withheld under section 552.101 in conjunction with common-law privacy. Therefore, the district must withhold all remaining dates of birth of identifiable public citizens under section 552.101 of the Government Code in conjunction with common-law privacy.<sup>6</sup>

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

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<sup>5</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

<sup>6</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

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.

Section 552.117(a)(1) of the Government Code 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). *Id.* §§ 552.117(a)(1), .024. 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). Thus, a school district may only withhold under section 552.117 the home address and telephone number, emergency contact information, and family member information of a current or former employee or official of the district who requests this information be kept confidential under section 552.024. We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). 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 individuals whose information is 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; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. Conversely, to the extent the individuals at issue did not timely request confidentiality under section 552.024, the district may not withhold the information we have marked 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 information we have marked was produced to DPD, DFPS, or the department, the district must withhold the remaining information we have marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code; however, if this information was not produced to DPD, DFPS, or the department, the district must withhold the information we have marked within this information under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code. Provided the teachers at issue were required to hold and did hold the appropriate certificate at the time of the evaluations at issue, the district must withhold the evaluations we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; however, to the extent the evaluations we have marked that relate to the requestor's client are the type contemplated in section 21.352 of the Education Code, this requestor has a right of access to his client's own evaluations under section 21.352(c) and they may not be withheld from him under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. The district must withhold: (1) the dates of birth we have marked under section 552.102(a) of the Government Code; (2) the identifying information of the juvenile victims under section 552.101 of the Government Code in conjunction with common-law privacy; (3) all remaining dates of birth of identifiable public citizens under section 552.101 of the Government Code in conjunction with common-law privacy; and (4) the information we have marked under section 552.117(a)(1) of the Government Code if the employees whose information is at issue timely requested confidentiality under section 552.024 of the Government Code; however, the marked cellular telephone numbers may be withheld only if a governmental body does not pay for the cellular telephone service. The district must release the remaining information.<sup>7</sup>

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/>

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<sup>7</sup>We note the requestor has a special right of access to some of the information being released in this instance. *See* Gov't Code § 552.023(a) (governmental body may not deny access to person to whom information relates or person's agent on ground that information is considered confidential by privacy principles); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Accordingly, the district must again seek a decision from this office if it receives another request for the same information from another requestor.

[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 "Tim Neal". The signature is written in a cursive style with a large initial "T" and a long, sweeping underline.

Tim Neal  
Assistant Attorney General  
Open Records Division

TN/tdw

Ref: ID# 671281

Enc. Submitted documents

c: Requestor  
(w/o enclosures)