



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 13, 2017

Ms. Leticia D. McGowan
Assistant General Counsel
Dallas Independent School District
9400 North Central Expressway, Suite 612
Dallas, Texas 75231

OR2017-28315

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# 687883 (ORR # 16585).

The Dallas Independent School District (the "district") received a request for all employment records pertaining to the requestor. You state the district will release some information. 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.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

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>.

disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted redacted and 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. Section 552.101 encompasses information protected by other statutes, such as section 261.201 of the Family Code, which provides, in part, the following:

(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 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 claim 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 investigations). You state the information at issue was obtained from the Dallas Police Department (“DPD”), the Texas Department of Family and Protective Services (“DFPS”), or the district’s police department (the “department”). Upon review, we find the information we have marked was used or developed in an investigation by DFPS of alleged or suspected child abuse under chapter 261. Therefore, the district must withhold this information under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code.² However, we find most of the remaining information was not obtained from DPD, DFPS, or the department, but instead relates to an administrative investigation by the district. We are unable to determine, however, whether the Suspected Child Abuse

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

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 or neglect under chapter 261 and the district must withhold it under section 552.101 of the Government Code in conjunction with section 261.201(a)(2) of the Family Code.³

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 and the city may not withhold it on the basis of section 261.201(a)(2). In this instance, however, we find a portion of the reporting form consists 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, in this instance, 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) of the Family Code.⁴ 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 (listing agencies that may conduct child abuse investigations). Upon review, we find none of the remaining information consists of the identifying information of an individual who made a report under chapter 261. 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 the information we have marked

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satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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 office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). We note section 552.135 protects an informer's identity, but it does not generally encompass protection for witnesses or witness statements. You state the remaining information identifies students and employees who reported alleged violations of criminal and civil laws. However, we find no portion of the remaining information contains the identity of an informer for section 552.135 purposes. Therefore, we conclude the district may not withhold any of the remaining information on the basis of section 552.135.

In summary, 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. If the submitted Suspected Child Abuse Reporting Form was produced to DPD, DFPS, or the department, the district must withhold the submitted 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 submitted Suspected Child Abuse Reporting Form was not produced to DPD, DFPS, or the department, 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) of the Family Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must release the remaining information, including the remaining portion of the Suspected Child Abuse Reporting Form to the extent it was not produced to DPD, DFPS, or the department.⁵

⁵We note the requestor has a right of access to some of the information being released. *See* Gov't Code § 552.023(a) (person or person's authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person's privacy interests); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

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 that reads "Cole Hutchison". The signature is written in a cursive style with a large initial "C" and a distinct "H".

Cole Hutchison
Assistant Attorney General
Open Records Division

CH/sb

Ref: ID# 687883

Enc. Submitted documents

c: Requestor
(w/o enclosures)