



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

January 24, 2020

Public Information Office
Katy Independent School District
P.O. Box 159
Katy, Texas 77492-0159

OR2020-02346

Dear Katy I.S.D. Public Information Office:

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# 804758 (PIR# 19298_40).

The Katy Independent School District (the "district") received a request for all communications sent through the anonymous SpeakUp system (the "system"). You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted representative sample of information.²

Initially, the United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the

¹ We note the district did not comply with section 552.301 of the Government Code in requesting this decision. *See* Gov't Code § 552.301(b). Nonetheless, because section 552.101 of the Government Code can provide a compelling reason to overcome the presumption of openness, we will consider its applicability to the submitted information. *See id.* §§ 552.007, .302, .352.

² We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

purpose of our review in the open records ruling process under the Act.³ Consequently, state and local education 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”). In this instance, you have submitted unredacted education records for our review. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to the submitted records. Such determinations under FERPA must be made by the educational authority in possession of such records. We will, however, address the applicability of the district’s claimed exception for 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 information that is made confidential by other statutes. This section encompasses information that is made confidential by other statutes, such as the Homeland Security Act (the “HSA”). Sections 418.176 through 418.182 were added to chapter 418 of the Government Code as part of the HSA. Section 418.177 of the Government Code provides:

Information is confidential if the information:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

Id. § 418.177. Section 418.182(a) of the Government Code provides, in relevant part:

“information . . . in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.”

Id. §418.182(a). The fact that information may relate to a governmental body’s security concerns does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute’s

³A copy of this letter may be found on the Office of the Attorney General’s website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You state the system is a reporting system used by the district as part of the its security system for the “protection of students, staff and campuses from terrorism and related criminal activity.” You explain users submit tips and “all tips are then thoroughly investigated by [d]istrict personnel, police, and/or a crisis management team[,]” in order to “detect and prevent school related safety and security threats and incidences.” You state the responsive information was collected, assembled, and maintained by the district through the system “as a means to protect its students, staff and campuses from safety and security threats[,]” and it is used by the district in the “detection and prevention of significant safety and security issues[.]” Based upon these representations and our review, we find you have demonstrated the applicability of section 418.177 to some of the information at issue. Accordingly, the district must withhold the information we have marked under section 552.101 in conjunction with section 418.177.⁴ However, we find you have failed to demonstrate the applicability of sections 418.177 and 418.182 to the remaining information; thus, the remaining information may not be withheld under section 552.101 on either of these bases.

We note some of the remaining information is subject to section 552.135 of the Government Code.⁵ Section 552.135 provides, in relevant part:

(a) “Informer” means a student or a 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].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student’s or former student’s name; or

⁴ As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

⁵ The 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 Nos. 481 (1987), 480 (1987), 470 (1987).

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Id. § 552.135(a)-(c). 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). Additionally, individuals who provide information in the course of an investigation, but do not report a violation are not informants for purposes of section 552.135. We note some of the remaining information identifies students or employees who reported alleged violations of criminal and civil laws. Therefore, the district must withhold the information we have marked under section 552.135.

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. Section 552.101 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 concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Additionally, we note the doctrine of common-law privacy generally protects the identifying information of juvenile offenders and juvenile victims of abuse and neglect. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code §§ 51.02(2) (defining "child" for purposes of title 3 of Family Code as an individual who was at least ten years old and less than seventeen years old when conduct occurred), 58.008, 261.201.

Upon review, we find some of the remaining information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. In this instance, some of the information at issue consists of the identifying information of individuals who may have been juvenile offenders. However, because the information at issue does not reflect the ages of these individuals, we must rule conditionally. Therefore, to the extent the marked information pertaining to offenders consists of the identifying information of an offender who was ten years of age or older and under seventeen years of age at the time of the alleged conduct, the district must withhold this marked information under section 552.101 in conjunction with common-law privacy. Conversely, to the extent the offender whose identifying information we have marked was younger than ten years of age or seventeen years of age or older at the time of the alleged conduct, the marked information may not be withheld under section 552.101 on this basis. Regardless, the district must withhold the

remaining information we have marked under section 552.101 in conjunction with common-law privacy.

In summary, district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 418.177 of the Government Code. The district must withhold the information we have marked under section 552.135 of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; however, with respect to the identifying information of offenders we have marked, to the extent the offender was younger than ten years of age or was seventeen years of age or older at the time of the alleged conduct, the marked information may not be withheld under section 552.101 in conjunction with common-law privacy and must be released. 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,



Emily Kunst
Assistant Attorney General
Open Records Division

EK/gw

Ref: ID# 804758

Enc. Submitted documents

c: Requestor
(w/o enclosures)