



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2020

Ms. Priscilla de Mata  
Counsel for Socorro Independent School District  
Blanco, Ordoñez, Mata & Wechsler, P.C.  
5715 Cromo Drive  
El Paso, Texas 79912

OR2020-32126

Dear Ms. de Mata:

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# 858849 (ORR# 2021-042-J).

The Socorro Independent School District (the "district"), which you represent, received a request for information pertaining to a named former employee. You claim some of the submitted information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.137 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"); *see also* Open Records Decision No. 224 (1979) (student's handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting,

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>

style of expression, or particular incidents related in the comments). Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to any of the submitted records, except to note FERPA is not applicable to law enforcement records maintained by the district's police department (the "department") that were created by the department for law enforcement purposes. 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3 (defining "education record"), .8. Thus, to the extent the information at issue is not subject to FERPA, we will consider its public availability.

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 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 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). Upon review, we find the information we marked was used or developed by the department in an investigation of alleged or suspected child abuse or neglect. *See id.* §§ 101.003(a) (defining "child" for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes), 261.001(1), (4) (defining "abuse" and "neglect" for purposes of chapter 261 of the Family Code). Accordingly, the information we marked is within the scope of section 261.201 of the Family Code. You have not indicated the department has adopted a rule that governs the release of this type of information. Therefore, we assume no such regulation exists. Given that assumption, we conclude the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>2</sup>

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

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

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. The third court of appeals has concluded public citizens’ dates of birth are protected by common-law privacy pursuant to section 552.101. *See 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 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 offenders whose identifying information we 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 marked under section 552.101 in conjunction with common-law privacy.

Section 552.117(a)(2) of the Government Code exempts from public disclosure the home address, home telephone number, emergency contact information, and social security number of a peace officer, as well as information that reveals whether the peace officer has family members, regardless of whether the peace officer complies with sections 552.024 and 552.1175 of the Government Code. *See Gov’t Code* § 552.117(a)(2). Section 552.117(a)(2) applies to peace officers as defined by article 2.12 of the Code of Criminal Procedure. In this instance, we are unable to determine whether the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12. To the extent the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the district must withhold the information we marked under section 552.117(a)(2) of the Government Code. However, we find the remaining information does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a peace officer, and the district may not withhold the remaining information under section 552.117(a)(2) of the Government Code.

If the information at issue pertains to an individual who is not currently a licensed peace officer, then the information may be subject to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) exempts from disclosure the home address and telephone number, emergency contact information, social security number, and family member

information of a current or former employee of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code, except as provided by section 552.024(a-1). *See id.* § 552.117(a)(1); *see also id.* § 552.024(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 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. Therefore, to the extent the individual whose information is at issue is not currently a licensed peace officer as defined by article 2.12, but this individual made a request for confidentiality under section 552.024 of the Government Code prior to the date of the governmental body's receipt of the request for the information, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. Upon review, however, we find the remaining information at issue does not consist of the home address, telephone number, emergency contact information, social security number, or family member information of a current or former employee of the district, and the district may not withhold any of the remaining information under section 552.117(a)(1) of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). Section 552.137 does not apply to an institutional e-mail address, the general e-mail address of a business, an e-mail address of a person who has a contractual relationship with a governmental body, an e-mail address of a vendor who seeks to contract with a governmental body, an e-mail address maintained by a governmental entity for one of its officials or employees, or an e-mail address provided to a governmental body on a letterhead. *See id.* § 552.137(c). Additionally, section 552.137 does not apply to the private e-mail addresses of governmental officials or employees who use their private e-mail addresses to conduct official governmental business. *See Austin Bulldog v. Leffingwell*, 490 S.W.3d 240 (Tex. App.—Austin 2016, no pet.) (holding personal e-mail addresses of government officials used to conduct official government business are not e-mail addresses of "members of the public" for purposes of section 552.137(a)). Because we are unable to discern whether the e-mail addresses at issue belong to district employees or officials or fall within the scope of section 552.137(c), we must rule conditionally. Accordingly, to the extent the e-mail addresses in the remaining information belong to members of the public and are not excluded by subsection 552.137(c) of the Government Code, the district must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. *See* Gov't Code § 552.137(b). However, to the extent an e-mail addresses in the remaining information are excluded by subsection 552.137(c) or belongs to a district employee or official, the county may not withhold that e-mail address under section 552.137 of the Government Code.

In summary, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code. The

district must withhold the information we 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 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. To the extent the individual whose information is at issue is currently a licensed peace officer as defined by article 2.12, the district must withhold the information we marked under section 552.117(a)(2) of the Government Code. To the extent the individual whose information is at issue is not currently a licensed peace officer as defined by article 2.12, but this individual made a request for confidentiality under section 552.024 of the Government Code prior to the date of the governmental body's receipt of the request for the information, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. To the extent the e-mail addresses in the remaining information belong to members of the public and are not excluded by subsection 552.137(c) of the Government Code, the district must withhold such e-mail addresses under section 552.137 of the Government Code, unless the individuals to whom the e-mail addresses belong affirmatively consent to their release. 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,

Matthew Taylor  
Assistant Attorney General  
Open Records Division

MT/jxd

Ref: ID# 858849

Enc. Submitted documents

c: Requestor  
(w/o enclosures)