



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 31, 2022

Ms. Sarah Flournoy  
Counsel for the Grapevine-Colleyville Independent School District  
Brackett & Ellis, P.C.  
100 Main Street  
Fort Worth, Texas 76102-3090

OR2022-02840

Dear Ms. Flournoy:

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# 927087.

The Grapevine-Colleyville Independent School District (the "district"), which you represent, received a request for a named individual's personnel file. You state the district will release some information to the requestor and will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed 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. Section 552.101 encompasses the doctrine of common-law privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and

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<sup>1</sup> The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. A 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>.

(2) is not of legitimate concern to the public. *Industrial Found. v. Texas 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 established. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). We note, however, that this office has concluded the public has a legitimate interest in information that relates to public employees and their conduct in the workplace. *See, e.g.*, Open Records Decision Nos. 562 at 10 (1990) (personnel file information does not involve most intimate aspects of human affairs but in fact touches on matters of legitimate public concern), 470 at 4 (1987) (job performance does not generally constitute public employee's private affairs), 444 at 3 (1986) (public has obvious interest in information concerning qualifications and performance of government employees), and 405 at 2 (1983) (manner in which public employee's job was performed cannot be said to be of minimal public interest). Upon review, we find some of the submitted information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, the district must withhold the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. However, we find no portion of the remaining information is highly intimate or embarrassing information of an individual that is of no public concern. Accordingly, the district may not withhold any of the remaining information under section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.117(a)(1) of the Government Code excepts 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).<sup>2</sup> *See* Gov't Code §§ 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, the 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. *See id.* § 552.117(a)(1). We note, for purposes of section 552.117, "family member" means a spouse, minor child, or adult child who resides in the person's home. *See id.* § 552.117(c) (providing that "family member" has meaning assigned by Fin. Code § 31.006(d)). 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

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<sup>2</sup> 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.

former employee or official who did not timely request under section 552.024 the information be kept confidential. Therefore, to the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. Conversely, to the extent the employees at issue did not timely request confidentiality under section 552.024, the district may not withhold the information at issue under section 552.117(a)(1) 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 common-law privacy. To the extent the employees at issue timely requested confidentiality under section 552.024 of the Government Code, the district must withhold the information we marked under section 552.117(a)(1) of the Government Code. 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,

Deborah Southerland  
Assistant Attorney General  
Open Records Division

DS/ba

Ref: ID# 927087

Enc. Submitted documents

c: Requestor  
(w/o enclosures)