



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

May 31, 2022

Ms. Miranda E. Crow  
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Atkins, Hollman, Jones, Peacock, Lewis & Lyon  
3800 East 42nd Street, Suite 500  
Odessa, Texas 79762

OR2022-15429

Dear Ms. Crow:

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# 950765.

The Ector County Independent School District (the "district"), which you represent, received a request for information pertaining to specified incidents and school records pertaining to the requestor's minor child. You state you have released some information. You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.108, and 552.135 of the Government Code.<sup>1</sup> 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>2</sup> Consequently,

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<sup>1</sup> Although you raise section 552.117 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we presume you no longer assert this exception. See Gov't Code §§ 552.301, .302.

<sup>2</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>.

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, style of expression, or particular incidents related in the comments). The district asserts FERPA applies to the requested documents. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we do not address the applicability of FERPA to the requested 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 a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. Similarly, we do not address the district’s assertion of section 552.114 of the Government Code. *See* Gov’t Code §§ 552.023 (incorporating FERPA into the Act), 552.114 (excepting from disclosure “student records”); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). 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 58.008 of the Family Code, which provides, in part, as follows:

(b) Except as provided by Subsection (c), law enforcement records concerning a child and information concerning a child that are stored by electronic means or otherwise and from which a record could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult records;
- (2) if maintained electronically in the same computer system as adult records, accessible only under controls that are separate and distinct from the controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subsection (c) or Subchapter B, D, or E.

Fam. Code § 58.008(b); *see also id.* § 51.03 (defining “delinquent conduct” and “conduct indicating a need for supervision” for purposes of title 3 of Family Code). Section 58.008(b) is applicable to records of juvenile conduct that occurred before, on, or after September 1, 2017. *See* Act of May 28, 2017, 85th Leg., R.S., ch. 746, § 22. The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). You assert the submitted information is confidential under section 58.008(b) of the

Family Code. Upon review, we find some of the information at issue involves juvenile offenders, so as to fall within the scope of section 58.008(b). The exceptions in section 58.008 do not appear to apply to this information. Therefore, the district must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.<sup>3</sup> However, we find the remaining information consists of internal administrative records that do not constitute juvenile law enforcement records for purposes of section 58.008(b). Therefore, the district may not withhold any portion of the remaining information under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code.

You also raise section 552.108(a)(2) of the Government Code for the remaining information. Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that did not result in conviction or deferred adjudication. *See* Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See id.* § 552.301(e)(1)(A) (governmental body must provide comments explaining why exceptions raised should apply to information requested). However, we note the remaining information at issue consists of internal administrative records and the district has failed to demonstrate this information deals with the detection, investigation, or prosecution of crime only in relation to a criminal investigation that did not result in conviction or deferred adjudication. Therefore, the district may not withhold any of the remaining information at issue under section 552.108(a)(2) of the Government Code.

Section 552.135 of the Government Code provides in relevant part the following:

(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

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

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<sup>3</sup> As our ruling is dispositive, we need not address the remaining arguments against disclosure of this information or address the applicability of section 1701.661(a) of the Occupations Code to the submitted video recordings. *See generally* Occ. Code § 1701.661(a), (e).

(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, witnesses and other individuals who provide information in the course of an investigation are not informants for purposes of section 552.135 of the Government Code. You state some of the remaining information identifies a student who reported an alleged violation of criminal laws. Upon review, we find the district must withhold the information we marked under section 552.135 of the Government Code. However, the district has failed to demonstrate any of the remaining information at issue reveals the identity of an informer for the purposes of section 552.135 of the Government Code. Therefore, the district may not withhold the remaining information on that ground.

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 and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. This office has also held common-law privacy protects the identity of a juvenile offender. *See* Open Records Decision No. 394 (1983); *cf.* Fam. Code § 58.008(b). 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.). We note the requestor has a right of access to her minor child’s date of birth pursuant to section 552.023 of the Government Code. *See* Gov’t Code § 552.023(a) (“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 that is protected from public disclosure by laws intended to protect that person’s privacy interests”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning himself). Further, we note the information at issue contains the dates of birth of individuals who will be de-identified and whose privacy interests will, thus, be protected. Upon review, we find some of the remaining information, which we marked, satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Accordingly, with the exception of the requestor’s minor child’s date of birth, the district must withhold the dates of birth of any identifiable public citizens and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy.

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).<sup>4</sup> See Gov't Code § 552.137(a)-(c). The e-mail address at issue is not excluded by subsection (c). Therefore, the district must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure.

In summary, the district must withhold the information we marked and indicated under section 552.101 of the Government Code in conjunction with section 58.008(b) of the Family Code. The district must withhold the information we marked under section 552.135 of the Government Code. With the exception of the requestor's minor child's date of birth, the district must withhold the dates of birth of any identifiable public citizens and the information we marked under section 552.101 of the Government Code in conjunction with common-law privacy. The district must withhold the personal e-mail address we marked under section 552.137 of the Government Code, unless the owner affirmatively consents to its public disclosure. The district must release the remaining information.<sup>5</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 <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,

D. Michelle Case  
Assistant Attorney General  
Open Records Division

DMH/jm

Ref: ID# 950765

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</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, 480 (1987), 470 (1987).

<sup>5</sup> We note the requestor has a right of access to some of the information being released. See Gov't Code § 552.023(a); ORD 481 at 4. Thus, if the district receives another request for the same information from a different requestor, the district must again seek a decision from this office. Further, we note the information at issue contains social security numbers. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. Gov't Code § 552.147(b).