



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 25, 2022

Ms. Esther Kolni
General Counsel
Irving Independent School District
2621 West Airport Freeway
Irving, Texas 75062

OR2022-32975

Dear Ms. Kolni:

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# 980640 (Reference No. I001355).

The Irving Independent School District (the "district") received a request for the personnel file of a named former district employee.¹ You state you will release some information with redactions. We understand the district has redacted certain information subject to section 552.117(a)(1) of the Government Code pursuant to section 552.024(c)(2) of the Government Code. Additionally, you state the district has redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure

¹ You indicate the district sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code, and the requestor accepted the cost estimate. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You also inform us the district received the required payment on August 11, 2022. *See id.* § 552.263(e) (if governmental body requires deposit or bond for anticipated costs pursuant to section 552.263, request for information is considered to have been received on date governmental body receives bond or deposit).

² 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>.

“student records”); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). You claim portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.136 of the Government Code.³ Additionally, you state, and provide documentation showing, the district notified the Irving Police Department (the “department”) of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released.⁴ *See* Gov’t Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the requestor specifically excludes dates of birth, certain e-mail addresses, driver’s license numbers, and social security numbers from the request. Additionally, you inform us the requestor has agreed to redaction of private information pertaining to employee transcripts, personal phone numbers, home addresses, and financial account numbers. Accordingly, dates of birth, certain e-mail addresses, driver’s license numbers, social security numbers, and private information pertaining to employee transcripts, personal phone numbers, home addresses, and financial account numbers within the submitted documents are not responsive to the instant request. This ruling does not address the public availability of any information that is not responsive to the request and the district is not required to release such information in response to this request.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. Section 552.101 encompasses information protected by 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 [chapter 261 of the Family Code] 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 [chapter 261 of the Family Code] or in providing services as a result of an investigation.

³ Although you do not cite to section 552.136 of the Government Code in your brief to this office, we understand you to raise this section based on your markings.

⁴As of the date of this letter, we have not received comments from the department.

Fam. Code § 261.201(a); *see id.* § 261.001(1), (4) (defining “abuse” and “neglect” for purposes of chapter 261 of the Family Code); *see also id.* § 101.003(a) (defining “child” for purposes of section 261.201 as a 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). 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). However, we note the department and the Child Protective Services Division of the Texas Department of Family and Protective Services (“CPS”) are agencies authorized to conduct investigations under chapter 261 of the Family Code. You inform us the information you marked was submitted to and used by the department and CPS in their investigation under chapter 261 of the Family Code. Based upon these representations, we find the information at issue consists of information that was used or developed by the department and CPS in an investigation of alleged or suspected child abuse or neglect under chapter 261 of the Family Code. Accordingly, we conclude the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁵ *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute).

Section 552.102(b) of the Government Code excepts from public disclosure “a transcript from an institution of higher education maintained in the personnel file of a professional public school employee[.]” Gov’t Code § 552.102(b). However, section 552.102(b) does not except from public disclosure the employee’s name, “the degree obtained[.] or the curriculum on a transcript in the personnel file of the employee.” *Id.*; *see also* Open Records Decision No. 526 (1989). Accordingly, with the exception of the employee’s name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code.

Section 552.136(b) of the Government Code provides, “[n]otwithstanding any other provision of [the Act], a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136(b). An access device number is one that may be used to “(1) obtain money, goods, services, or another thing of value; or (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.” *Id.* § 552.136(a). However, we find you have not explained the employee identification numbers you redacted consist of credit card, debit card, or charge card numbers, or are an access device number used to obtain money, goods, services, or any item of value, or used to initiate the transfer of funds. *See id.*; *see also id.* § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies). Therefore, we find you have failed to demonstrate the applicability of section 552.136 of the Government Code to the employee identification numbers you redacted, and the district may not withhold that information on this ground.

⁵ As our ruling is dispositive, we need not address the remaining argument against disclosure of this information.

In summary, the district must withhold the information you marked under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of the employee's name, courses taken, and degrees obtained, the district must withhold the submitted college transcripts pursuant to section 552.102(b) of the Government Code. The district must release the remaining responsive 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,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/jxd

Ref: ID# 980640

c: Requestor