



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 12, 2007

Mr. Michael C. Wynne  
Nall, Pelley and Wynne, L.L.P.  
For Grayson County College  
P.O. Box 2228  
Sherman, Texas 75091-2228

OR2007-01798

Dear Mr. Wynne:

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# 271733.

The Grayson County College (the "college"), which you represent, received a request for twelve specified categories of information, including documents pertaining to EMS classes and students. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.114, and 552.117 of the Government Code. We have considered the exceptions you claim.

Recently, the United States Department of Education Family Policy Compliance Office (the "DOE") informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental 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 PIA 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"). You indicate that the requested information includes student records. Because our office is prohibited from reviewing these education records to

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website: [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the requested information. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>2</sup>

You also assert that the requested information does not constitute public information under section 552.002 of the Government Code. The Act only applies to public information. *See* Gov't Code §§ 552.021, 552.221. Section 552.002(a) of the Act defines "public information" as information "collected, assembled, or maintained under a law or ordinance or in connection with transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). Thus, under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of an individual. *See* Open Records Decision No. 635 at 4 (1995). We note that the determination of whether information is subject to the Act is case specific. You have not submitted any arguments explaining why the requested information is not public information under the Act; therefore, we conclude you have failed to establish that the requested information is not "public information" for purposes of the Act. Accordingly, we will consider whether the requested information is excepted from release to the public under the Act.

We must next address the college's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(e)(1)(D). The college received the request for information on November 22, 2006, but the college has not submitted a copy of the specific information requested or representative samples of it. Thus, the college failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open

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<sup>2</sup>In the future, if the college does obtain parental consent to submit unredacted education records and the college seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

Records Decision No. 150 (1977). Although the exceptions you assert under the Act can provide compelling reasons for nondisclosure of information under section 552.302, we have no basis for concluding that the requested information is excepted under these sections because you failed to submit any portion of it to us for our review. Therefore, we have no choice but to order the college to release the information at issue. If the college believes that the information at issue is confidential, private, or proprietary and may not lawfully be released, the college must challenge this ruling in court as outlined below. This ruling does not address the applicability of FERPA to the requested information. Should the college determine that all or portions of the submitted information consists of “education records” that must be withheld under FERPA, the college must dispose of that information in accordance with FERPA, rather than the Act.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

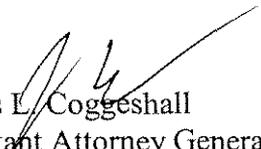
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/jww

Ref: ID# 271733

c: Mr. Calvin Allison  
c/o Michael C. Wynne  
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