



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 11, 2010

Ms. Heather M. Castillo  
Hill Gilstrap  
1400 West Abram Street  
Arlington, Texas 76013

OR2010-00496

Dear Ms. Castillo:

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# 367825.

The Arlington Independent School District (the "district"), which you represent, received a request for information pertaining to a specified grievance, including 1) minutes, notes or recordings from closed sessions of the district's Board of Trustees, 2) minutes, notes or recordings from meetings between board members and others, and 3) handwritten statements from four individuals. You state that some of the responsive information is being released. You state that the requested statements are being withheld under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim that the tape recordings and certified agendas from closed sessions are excepted from disclosure under section 552.101 of the Government Code. You also claim the certified agendas are privileged under Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5. We have considered your arguments.

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. This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order

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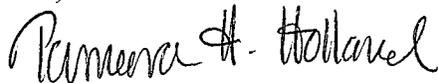
<sup>1</sup>We note the United States Department of Education Family Policy Compliance Office (the "DOE") informed this office that FERPA, 20 U.S.C. § 1232g(a), does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

issued under Subsection (b)(3).<sup>2</sup> *Id.* § 551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). You inform us that the information at issue consists of tape recordings and certified agendas of closed meetings of the district. Therefore, the district must withhold this information from the public pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.<sup>3</sup> Finally, although the district asks this office to determine whether the requested tapes must be released to this requestor under FERPA, determinations under FERPA must be made by the district.<sup>4</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 [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Tamara H. Holland  
Assistant Attorney General  
Open Records Division

THH/jb

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<sup>2</sup>As you acknowledge, the district is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information under statutory predecessor to Gov't Code § 552.101).

<sup>3</sup>We note this office recently issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including certified agendas and tapes of closed meetings under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code, without the necessity of requesting an attorney general decision.

<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments.

Ref: ID# 367825

c: Requestor