



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 24, 2010

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

OR2010-02772

Dear Ms. Hollmann:

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# 375477.

The Ector County Independent School District (the "district"), which you represent, received a request for 1) all video, audio, and notes from a specified Level 3 grievance meeting, 2) the video from a specified bus from two specified days, and 3) the audio from a specified Level 2 grievance meeting. You state the district has released some of the requested information. You also state the requested bus videos are being withheld under the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ Furthermore, you state the district does not have an audio recording from the Level 2 meeting.² You claim the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

¹We 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>.

²The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

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 issued under Subsection (b)(3)."³ *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 the information at issue consists of an audio tape, certified agenda, and transcript of a closed meeting 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.⁴

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, 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

³As you acknowledge, the district is not required to submit the certified agenda or tape 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).

⁴We 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.

Ref: ID# 375477

Enc. Submitted documents

c: Requestor