



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 19, 2010

Ms. Andrea Sheehan
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2010-10689

Dear Ms. Sheehan:

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#388243.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for all video and audio recordings from surveillance at Newman-Smith High School from 2:00 p.m. to 4:00 p.m. on April 30, 2010.¹ You state the district does not have any audio recordings responsive to the request. We note the 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). You claim that the requested video recordings are excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

¹You note that the district received two clarifications of the information requested. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request).

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the federal 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 consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.³ Consequently, 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"). You state that the submitted video recordings may contain unredacted student records with personally identifiable information. Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address FERPA with respect to the video recordings. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education record.⁴

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 exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.182 provides in part:

(a) [I]nformation, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact that information may generally be related to a risk or vulnerability assessment, critical infrastructure, or a security system does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection). As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

³A copy of this letter may be found on the attorney general's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

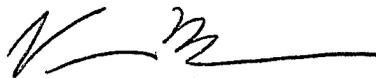
⁴In the future, if the district does obtain consent to submit unredacted education records and seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

You state that release of the information at issue would reveal the entire coverage and location of the school's surveillance system and thus, impact campus security. Upon review, we determine the requested video recordings relate to the specifications and location of security systems used to protect public property from an act of terrorism or related criminal activity. *See Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet. h.) (case construing section 418.182 of the HSA, which ruled the recorded images necessarily relate to the specifications of the security system that recorded them). Accordingly, the district must withhold the requested video recordings under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code.⁵

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,



Vanessa Burgess
Assistant Attorney General
Open Records Division

VB/jb

Ref: ID#388243

Enc. Submitted documents

c: Requestor
(w/o enclosures)

⁵As our ruling is dispositive, we need not address your remaining arguments against disclosure.