



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2010

Mr. Robb D. Decker
Walsh, Anderson, Brown, Gallegos & Green, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2010-12339

Dear Mr. Decker:

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# 390757.

The Port Neches-Groves Independent School District (the "district"), which you represent, received a request for all records pertaining to the requestors or their child, as well as documents regarding funding or due process hearings for special education students or students with disabilities. You state the district will provide some of the requested information to the requestors pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. *See* 20 U.S.C. § 1232g(a)(1)(A) (providing parents have right of access to own child's education records); *see also* 34 C.F.R. § 99.3 (defining "parents" and "education records"). You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

¹We note the district has redacted students' identifying information in the submitted documents pursuant to FERPA. 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. 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>.

Initially, we note one of the submitted documents was created after the district received the request for information. Thus, this document, which you have labeled as AG-0162, is not responsive to the request. This decision does not address the public availability of the non-responsive information, and that information need not be released.

Next, we note the responsive information is subject to section 552.022 of the Government Code, which provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body;

...

(13) a policy statement or interpretation that has been adopted or issued by an agency[.]

Gov't Code § 552.022(a)(3), (13). The submitted information includes invoices, an expenditure budget report, and grant award documents, which are made public under section 552.022(a)(3). The remaining information consists of policy statements and related documents that have been adopted by the district, which are made public under section 552.022(a)(13). Information subject to section 552.022 must be released unless it is expressly confidential under other law. You claim the submitted documents are excepted from disclosure under section 552.103 of the Government Code. However, this section is a discretionary exception that protects a governmental body's interests and is, therefore, not "other law" for purposes of section 552.022(a)(3) or section 552.022(13). *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the district may not withhold the submitted information under section 552.103 of the Government Code.

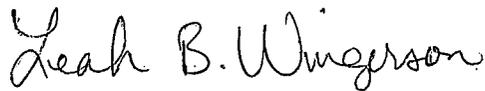
We note some of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1978). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of

compliance with the copyright law and the risk of a copyright infringement suit. Thus, the submitted information must be released, but any information protected by copyright must be released in accordance with copyright law.

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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 390757

Enc. Submitted documents

c: Requestors
(w/o enclosures)