



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 18, 2010

Mr. Jose R. Guerrero
Ramirez & Guerrero, L.L.P.
700 North Veterans Boulevard
Business Center, Suite B
San Juan, Texas 78589

OR2010-12528

Dear Mr. Guerrero:

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# 390846 (10-014G).

The Region One Education Service Center (the "center"), which you represent, received a request for information pertaining to all individuals that applied for specified certification programs during a specified time period. You state that the center has no information responsive to a portion of the request.¹ You state that the center will release some of the requested information. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.114, and 552.137 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act

¹The 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).

²Although you raise sections 551.026, 551.101, and 551.114 of the Government Code, we understand you to raise sections 552.026, 552.101, and 552.114 respectively. We note, however, section 552.026 is not an exception to disclosure. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. Gov't Code § 552.026.

("FERPA"), 20 U.S.C. § 1232g, 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 See 20 U.S.C. § 1232g(b); see also *id.* § 1232g(a)(4)(A) (defining "education records"); Open Records Decision No. 462 at 15 (1987). 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 center has determined that the shaded portions of the submitted information are subject to FERPA. We note that this information contains unredacted student identifying information. Because our office is prohibited from reviewing an education record to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records. Likewise, we do not address your arguments under section 552.114 of the Government Code. See Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). We will, however, address your remaining argument against disclosure of the information at issue.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). See Gov't Code § 552.137(a), (b). We note section 552.137 is not applicable to an e-mail address maintained by a governmental entity for one of its officials or employees. You state that the e-mail addresses at issue are not of a type specifically excluded by section 552.137(c). See *id.* § 552.137(c). You further state that the center has not received consent to disclose any of the e-mail addresses at issue. We note that, in this instance, some of the e-mail addresses at issue are maintained by governmental entities for their employees and may not be withheld under section 552.137. Therefore, with the exception of the e-mail addresses we have marked for release, the center must withhold the e-mail addresses you have indicated under section 552.137 of the Government Code.⁴

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

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 an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

In summary, with the exception of the information we have marked for release, the center must withhold the e-mail addresses you have indicated under section 552.137 of the Government Code. The remaining information must be released to the requestor. This ruling does not address the applicability of FERPA to the submitted information. Should the center determine that all or portions of the submitted information consist of "education records" that must be withheld under FERPA, the center must dispose of that information in accordance with FERPA, rather than the Act.

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,



Christopher D. Sterner
Assistant Attorney General
Open Records Division

CDSA/eeg

Ref: ID# 390846

Enc. Submitted documents

c: Requestor
(w/o enclosures)