



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 2, 2011

Ms. Jean Isaly  
Interim Superintendent  
Huffman Independent School District  
P.O. Box 2390  
Huffman, Texas 77336

OR2011-16091

Dear Ms. Isaly:

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# 439437.

The Huffman Independent School District (the "district") received a request for a copy of a specified tape recording. You claim the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

You indicate the requested recording constitutes an education record subject to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. 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 consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>1</sup> Because our office is prohibited from reviewing education records, we will not address FERPA with respect to the information other than to note a parent has a right of access to her child's education records. 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. We further note that the DOE also has informed this

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<sup>1</sup>A copy of this letter may be found on the attorney general's website, *available at* <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

office that if a state law prohibits a school district from providing a parent with access to the education records of his or her child and an opportunity to inspect and review the record, then the state statute conflicts with FERPA, and an educational agency or institution must comply with FERPA if it wishes to continue to receive federal education funds. Letter advisement from Ellen Campbell, Family Compliance Office, U.S. Department of Education to Robert Patterson, Open Records Division, Office of the Texas Attorney General (April 9, 2001). *See Equal Employment Opportunity Comm'n v. City of Orange*, 905 F. Supp 381, 382 (E.D. Tex. 1995); Open Records Decision No. 431 (1985) (FERPA prevails when in conflict with state law). Because the educational authority in possession of the education records is now responsible for determining the applicability of FERPA, we will only address your claimed exception to the disclosure of the requested information.

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 other statutes make confidential. You raise section 552.101 in conjunction with section 551.104 of the Open Meetings Act for the requested tape recording of a closed meeting.<sup>2</sup> Section 551.104 provides, in part, “[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).” *Id.* §551.104(c). Thus, such information cannot be released to a member of the public in response to an open records request. *See Attorney General Opinion JM-995 at 5-6 (1988)* (public disclosure of certified agenda of closed meeting may be accomplished only under procedures provided in Open Meetings Act). Section 551.146 of the Open Meetings Act makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See Gov’t Code § 551.146(a)-(b); see also Open Records Decision No. 495 at 4 (1988)* (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether governmental body may withhold such information under statutory predecessor to Gov’t Code § 552.101). You indicate the information at issue constitutes a tape recording of a closed meeting. Thus, the district must withhold the requested information under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code.

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

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<sup>2</sup>We note 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).

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,



Ana Carolina Vieira  
Assistant Attorney General  
Open Records Division

ACV/agn

Ref: ID# 439437

Enc. Submitted documents

c: Requestor  
(w/o enclosures)