



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2011

Ms. Karla Schultz
Walsh, Anderson, Brown, Gallegos and Green, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2011-17078

Dear Ms. Schultz:

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# 437775.

The Alice Independent School District (the "district"), which you represent, received a request for a specified video recording and the names of all the security guards working at a named high school. You state there are no documents responsive to the second part of the request.¹ You claim that the submitted information is excepted from disclosure under sections 552.101, 552.108, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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

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).

review in the open records ruling process under the Act.² 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 indicate that the submitted video recording 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.³ Accordingly, we also 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).

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).

²A copy of this letter may be found on the attorney general’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

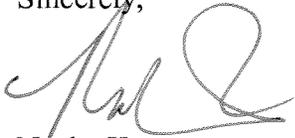
³In the future, if the district does obtain consent to submit unredacted education records and seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

You assert that release of the information at issue would reveal the coverage and location of portions of the school's surveillance system and, thus, impact campus security. Upon review, we determine the requested video recording relates 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.) (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 recording under section 552.101 of the Government Code in conjunction with section 418.182(a) 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,



Nneka Kanu
Assistant Attorney General
Open Records Division

NK/em

Ref: ID# 437775

Enc. Submitted documents

cc: Requestor
(w/o enclosures)

⁴As our ruling is dispositive, we need not address your remaining argument against disclosure.