



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2011

Mr. Robert Russo
Walsh, Anderson, Brown, Gallegos and Green, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2011-18731

Dear Mr. Russo:

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# 439440.

The La Vernia Independent School District (the "district"), which you represent, received five requests from the same requestor for five checks written on the district's account and the associated purchase orders and invoices. You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that some of the submitted information may be subject to the Family Educational Rights and Privacy Act ("FERPA"). The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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 or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ See 34 C.F.R. 99.3 (defining "personally identifiable information"). The submitted information includes unredacted education records. Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education records. We will, however, consider the applicability of the claimed exceptions to the submitted information.

¹A 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>.

Next, we note the submitted information is made expressly public under section 552.022 of the Government Code, which provides, in relevant part, as follows:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or 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[.]

Gov't Code § 552.022(a)(3). In this instance, the submitted information consists of checks and invoices. These documents fall within the purview of subsection 552.022(a)(3). Although you raise section 552.108 of the Government Code for this information, this is a discretionary exception and does not make information confidential under the Act. *See* Act of May 30, 2011, 82nd Leg., R.S., S.B. 602, §§ 3-21, 23-26, 28-37 (providing for “confidentiality” of information under specified exceptions), Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Therefore, the submitted information may not be withheld under section 552.108. However, you also raise section 552.136 of the Government Code, which does make information confidential under the Act. *See* Gov't Code § 552.136 (providing for “confidentiality” of information under section 552.136). Therefore, we will consider the applicability of section 552.136 to the information at issue.

Section 552.136 provides “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov't Code § 552.136. The submitted information contains bank account numbers and routing numbers. This office has determined that bank account numbers and routing numbers are access device numbers for purposes of section 552.136. Accordingly, the district must withhold the bank account numbers and routing numbers we have marked under section 552.136 of the Government Code.²

²You state the district will redact bank account numbers in the submitted information pursuant to Open Records Decision No. 684 (2009). That decision is a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a bank account number under section 552.136 of the Government Code, without the necessity of requesting an attorney general decision. However, as of September 1, 2011, the Texas legislature amended section 552.136 to allow a governmental body to redact the information described in subsections 552.136(a) and (b) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.136(c). Thus, the statutory amendments to section 552.136 of the Government Code supercede Open Records Decision No. 684 on September 1, 2011. Therefore, a governmental body may only redact information subject to subsections 552.136(a) and (b) in accordance with section 552.136, not Open Records Decision No. 684.

In summary, the district must withhold the bank account numbers and routing numbers we have marked under section 552.136 of the Government Code. The remaining information must be released.

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,

A handwritten signature in cursive script that reads "Jessica Marsh".

Jessica Marsh
Assistant Attorney General
Open Records Division

JM/bs

Ref: ID# 439440

Enc. Submitted documents

c: Requestor
(w/o enclosures)