



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 17, 2012

Ms. Charlotte A. Towe  
Assistant General Counsel  
Texas Department of Criminal Justice  
P.O. Box 4004  
Huntsville, Texas 77342-4004

OR2012-00776

Dear Ms. Towe:

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# 444506.

The Texas Department of Criminal Justice (the "department") received a request for the requestor's "intelligence equivalent rating" and "education level rating." You claim the requested information is excepted from disclosure under sections 552.101, 552.114, and 552.134 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 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 review in the open records ruling process under the Act.<sup>1</sup> 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

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website: [http://www.oag.state.tx.us/opinopen/og\\_resources.shtml](http://www.oag.state.tx.us/opinopen/og_resources.shtml).

is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”).

You inform us the submitted information consists of the requestor’s educational records that the department obtained from the Windham School District (the “district”), which we understand was established by the Texas Legislature as an entity separate and distinct from the department to provide educational programming and services to department inmates. *See* Educ. Code ch. 19. FERPA contains provisions that govern access to education records that were transferred by an educational agency or institution to a third party. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to the information at issue. Likewise, we will not address section 552.114 of the Government Code. *See* Gov’t Code § 552.114 (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). However, we note adult students have a right of access to their own education records, and this right of access prevails over inconsistent provisions of state law, such as the district’s assertions of sections 552.101 and 552.134 of the Government Code. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; *see also Equal Employment Opportunity Comm’n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (FERPA prevails over inconsistent provision of state law). Such determinations under FERPA must be made by the educational authorities from which the education records were obtained. Accordingly, the department must contact the district and the DOE regarding the applicability of FERPA to the submitted documents.

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](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,

  
James L. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/ag

Ref: ID# 444506

Enc. Submitted documents

c: Requestor  
(w/o enclosures)