



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 15, 2012

Mr. Andrew B. Thompson
Assistant General Counsel
Corpus Christi Independent School District
P.O. Box 110
Corpus Christi, Texas 78403-0110

OR2012-07186

Dear Mr. Thompson:

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# 453563.

The Corpus Christi Independent School District (the "district") received a request for specified protocols performed by a named individual. We understand the requested information concerns the requestor's child as a district student. You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted information.

Initially, you state you have redacted student-identifying information pursuant 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 has informed this office that the Family Educational Rights and Privacy Act ("FERPA") 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

¹While you also raised sections 552.101, 552.103, and 552.110 in your initial letter dated March 9, 2012, you have not presented arguments explaining how these exceptions apply to the submitted information, as required by section 552.301. Thus, we assume you have withdrawn these claims. See Gov't Code §§ 552.301(e)(1)(A), .302.

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”). Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA should be made, we will not address the applicability of FERPA to the submitted information, other than to note that parents have a right of access to their own child’s education records. 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. The DOE has also informed this 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 consider the claimed exception under the Act for the requested information.

Next, we find access to the submitted information is governed by provisions in the Education Code. Sections 26.004 and 26.006 specifically address a parent’s right of access to a parent’s child’s student records. Edu. Code §§ 26.004, .006. Section 26.004 provides “[a] parent is entitled to all written records of a school district concerning the parent’s child[.]” *Id.* § 26.004. Section 26.006 provides in relevant part:

(a) A parent is entitled to:

- (1) review all teaching materials, textbooks, and other teaching aids used in the classroom of the parent’s child; and
- (2) review each test administered to the parent’s child after the test is administered.

(b) A school district shall make teaching materials and tests readily available for review by parents. The district may specify reasonable hours for review.

Id. § 26.006(a)-(b). You state the submitted information is “testing protocols for diagnostic assessment.” You inform us these “test items” are “administered to help determine eligibility for special education services.” You state these testing protocols were administered by a

²A 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>.

district speech pathologist. We understand the protocols were administered to the requestor's child. Accordingly, based on your representations and our review of the submitted information, we find that the requestor has a right of access to the submitted information. *See id* § 26.006(a)(2); *see also id.* § 26.008(a) (parent is entitled to full information regarding the school activities of a parent's child). Although you seek to withhold the submitted information under section 552.122 of the Government Code, statutes governing the release of specific information prevail over the general exceptions to disclosure found in the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Therefore, the submitted information may not be withheld under section 552.122 of the Government Code and is subject to release to the requestor.

We note portions of the submitted information may be protected by copyright. A custodian of public records must comply with copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). However, a governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.*; *see* Open Records Decision No. 109 (1975). If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with copyright law and the risk of a copyright infringement suit. Thus, the submitted information must be released to this requestor, but any information that is protected by copyright may only be released in accordance with copyright law.

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,

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/som

Ref: ID# 453563

Enc. Submitted documents

c: Requestor
(w/o enclosures)