



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2012

Mr. Orlando Juarez, Jr.  
Escamilla, Poneck & Cruz, LLP  
216 West Village Boulevard, Suite 202  
Laredo, Texas 78041

OR2012-08830

Dear Mr. Juarez:

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# 456207.

The United Independent School District (the "district"), which you represent, received a request for a letter of concern written by a specified district teacher. You claim the submitted information is excepted from disclosure under sections 552.114 and 552.135 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office 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

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<sup>1</sup>Although you also raise section 552.026 of the Government Code as an exception to disclosure, section 552.026 is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. Gov't Code § 552.026.

review in the open records ruling process under the Act.<sup>2</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 is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You state the requested information constitutes an education record. Based on your comments, we understand you to indicate you have redacted the portions of the requested information that contain personally identifiable information and have submitted the remainder of the requested information to this office for our review. Because our office is prohibited from reviewing this record to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to the submitted document. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of such records. Likewise, we 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 and FERPA). However, we will consider your remaining argument against disclosure of the submitted information.

Section 552.135 of the Government Code provides the following:

- (a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov’t Code § 552.135. We note the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of civil, criminal, or regulatory law. Additionally, individuals who provide information in the course of an investigation but do not make the initial report are not informers for purposes of section 552.135. You state the submitted information identifies individuals who accused the specified teacher of violating section 101.65 of title 19 of the Texas Administrative Code. Based on your representation and our review, we have marked the information the district must withhold under section 552.135 of the Government Code. As no further exceptions to disclosure have been raised, the remaining information must be released.

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

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,

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

Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/bs

Ref: ID# 456207

Enc. Submitted documents

c: Requestor  
(w/o enclosures)