



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 7, 2012

Ms. Ylise Janssen  
Senior School Law Attorney  
Austin Independent School District  
1111 West Sixth Street  
Austin, Texas 78703

OR2012-12370

Dear Ms. Janssen:

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# 461410.

The Austin Independent School District (the "district") received a request for all records maintained at Martin Middle School and the district's Title I office relating to the disbursement of Title I funds, excepting those listed in the request. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.<sup>1</sup> We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they were specifically excluded by the requestor. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.

Next, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act

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<sup>1</sup>Although you raised section 552.101 of the Government Code, you have not submitted arguments explaining how this exception applies to the submitted information. Therefore, we assume you have withdrawn it. *See* Gov't Code §§ 552.301, .302.

(“FERPA”), 20 U.S.C. § 1232g, 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>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”). The submitted information contains unredacted education records. Because our office is prohibited from reviewing these records to determine the applicability of FERPA, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of such records.<sup>3</sup> We will, however, address the applicability of the claimed exceptions to the submitted information.

Next, we must address the district’s obligations under section 552.301 of the Government Code. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. *See* Gov’t Code § 552.301(b). Pursuant to section 552.301(b) of the Government Code, the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body must submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e)(1)(D). You state the district received the request for information on May 16, 2012. You note May 28, 2012 was a holiday on which the district was closed. This office does not count the date the request was received or holidays for the purpose of calculating a governmental body’s deadlines under the Act. Accordingly, you were required to provide the information required by section 552.301(b) by May 31, 2012, and the information required by section 552.301(e) by June 7, 2012. However, the envelope in which the district provided the information required by subsection 552.301(b) was postmarked June 1, 2012, and the envelope in which the district provided the information required by subsection 552.301(e) was postmarked June 8, 2012. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the

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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>.

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

district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 of the Government Code results in the legal presumption the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Although you claim section 552.103 of the Government Code, we note this is a discretionary exception that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475–76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). As such, section 552.103 does not make information confidential and does not provide a compelling reason for non-disclosure. Accordingly, the district may not withhold any of the submitted information under section 552.103 of the Government Code. However, because sections 552.130 and 552.136 of the Government Code make information confidential and provide compelling reasons for non-disclosure, we consider the applicability of these sections to the submitted information.<sup>4</sup>

Section 552.130(a)(2) of the Government Code provides that information relating to a motor vehicle title or registration issued by an agency of this state, or another state or country, is excepted from public release. Gov't Code § 552.130(a)(2). Therefore, the district must withhold the license plate numbers and vehicle identification numbers we have marked under section 552.130(a)(2) of the Government Code.

Section 552.136(b) of the Government Code states “[n]otwithstanding any other provision of [the Act], 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.”<sup>5</sup> *Id.* § 552.136(b). We have marked credit card numbers the district must withhold under section 552.136 of the Government Code.

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<sup>4</sup>The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

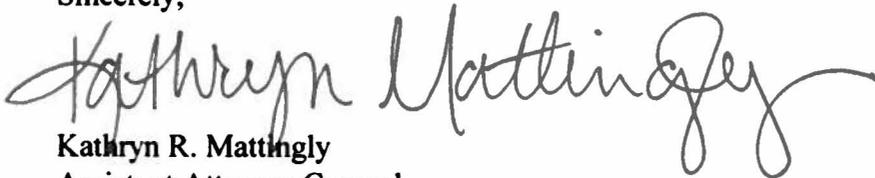
<sup>5</sup>We note, section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e).

In summary, the district must withhold the license plate numbers and vehicle identification numbers we have marked under section 552.130(a)(2) of the Government Code and the credit card 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](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, reading "Kathryn R. Mattingly". The signature is written in dark ink and is positioned above the typed name and title.

Kathryn R. Mattingly  
Assistant Attorney General  
Open Records Division

KRM/bhf

Ref: ID# 461410

Enc. Submitted documents

c: Requestor  
(w/o enclosures)