



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 23, 2012

Ms. Mia M. Martin
General Counsel
Richardson Independent School District
400 South Greenville Avenue
Richardson, Texas 75081-4198

OR2012-13433

Dear Ms. Martin:

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# 467460.

The Richardson Independent School District (the "district") received a request for information pertaining to the requestor's child and the district's Gifted and Talented program. You state you are making some of the requested information available to the requestor. You also state that you are withholding the requested student answer sheets pursuant to the federal Family Educational Rights and Privacy Act ("FERPA"). You state the requested test booklets are protected by copyright. You inform us that the district will allow the requestor to inspect the information in question, but ask whether the district is required to provide copies of the information at issue. We have considered your arguments.

We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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.¹ 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

¹A 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>.

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 education records, we will not address the applicability of FERPA to the information at issue, other than to note parents have a right of access to their own child’s education records. *See* 20 U.S.C. § 1232g(a)(1)(A). We note, FERPA does not entitle a parent to copy an education record to which the parent has a right of access, unless “circumstances effectively prevent the parent . . . from exercising the right to inspect and review the student’s education records[.]” 34 C.F.R. § 99.10(d); *see* 20 U.S.C. § 1232g(a)(1)(A). Determinations under FERPA must be made by the educational authority in possession of the records.

Next, you state the requested test booklets are protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Open Records Decision No. 180 at 3 (1977). 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 the copyright law and the risk of a copyright infringement suit. Accordingly, we find that the district complies with the Act by providing access to the information at issue and may not make copies of the copyrighted information for the requestor.

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,



Paige Lay
Assistant Attorney General
Open Records Division

PL/tch

Ref: ID# 467460

c: Requestor