



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 8, 2012

Mr. Kris Barnett  
Public Information Officer  
Chaparral Star Academy  
14046 Summit Drive  
Austin, Texas 78728

OR2012-17999

Dear Mr. Barnett:

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# 470670.

The Chaparral Star Academy ("CSA") received a request for specified e-mails. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You have submitted unredacted education records for our review. 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 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 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

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<sup>1</sup>A 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>.

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 exceptions under the Act for the requested information.

CSA generally raises section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is considered to be confidential under other law. *See* Open Records Decision Nos. 600 at 4 (1992) (constitutional privacy), 478 at 2 (1987) (statutory confidentiality), 611 at 1 (1992) (common-law privacy). However, CSA has failed to direct our attention to any law, nor are we aware of any law, under which any of the information at issue is considered to be confidential for purposes of section 552.101. Therefore, none of the submitted information may be withheld under section 552.101 of the Government Code.

Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body," unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses we have marked are not specifically excluded by section 552.137(c). As such, these e-mail addresses, which we have marked, must be withheld under section 552.137, unless the owners of the addresses have affirmatively consented to their release.<sup>2</sup> *See id.* § 552.137(b). As no further exceptions are raised, 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.

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<sup>2</sup>Open Records Decision No. 684 (2009) serves as a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including e-mail addresses of members of the public under section 552.137, without the necessity of requesting an attorney general decision.

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,



Vanessa Burgess  
Assistant Attorney General  
Open Records Division

VB/dls

Ref: ID# 470670

Enc. Submitted documents

c: Requestor  
(w/o enclosures)