



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 8, 2013

Mr. Orlando Juarez, Jr.  
Counsel for United Independent School District  
Escamilla, Poneck & Cruz, L.L.P.  
216 West Village Boulevard, Suite 202  
Laredo, Texas 78041

OR2013-07630

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# 486849.

The United Independent School District (the "district"), which you represent, received a request for the video of a specified incident and the three citations given with the statements of certain named individuals. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 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 you have not submitted any information responsive to the request for video recordings pertaining to the specified incident. Therefore, to the extent information responsive to this aspect of the request exists, we assume you have released it to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302.

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<sup>1</sup>Although you raise sections 552.102 and 552.132 of the Government Code, you have not submitted arguments explaining how these exceptions apply to the requested information. Therefore, we presume you have withdrawn these exceptions. *See* Gov't Code §§ 552.301, .302. Additionally, although you also claim section 552.026 of the Government Code, we note 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.

Next, we understand the district has redacted the home address and telephone number of a current district employee under section 552.117 of the Government Code as permitted by section 552.024(c) of the Government Code.<sup>2</sup> However, we note the district has also redacted a date of birth from the submitted information. You do not assert, nor does our review of our records indicate, that you have been authorized to withhold this information without first seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001). Because we can discern the nature of the redacted information, being deprived of the information does not inhibit our ability to make a ruling. However, in the future, the district must not redact information from the documents it submits to this office in seeking an open records ruling, unless the district is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. *See* Gov't Code § 552.301(e)(1)(D). Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See id.* § 552.302.

You state you have redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. The United States Department of Education Family Policy Compliance Office has informed this office that 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>3</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"). However, FERPA is not applicable to law enforcement records maintained by the district's police department for law enforcement purposes. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. Upon review, we find, and you acknowledge, the information at issue constitutes law enforcement records created and maintained by the district's police department for law enforcement purposes. Thus, these records are not subject to FERPA, and no portion of the records at issue may be withheld on that basis. However, we will address the district's remaining arguments with respect to the submitted information.

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<sup>2</sup>Section 552.117 of the Government Code excepts from disclosure the home address and telephone number, social security number, family member information, and emergency contact information of a current or former employee of a governmental body. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov't Code § 552.117(a)(1)). Section 552.024(c) of the Government Code authorizes a governmental body to withhold information subject to section 552.117 without requesting a decision from this office if the current or former employee chooses not to allow public access to the information in accordance with section 552.024(b). *See* Gov't Code § 552.024(b), (c).

<sup>3</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>.

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. Section 552.101 encompasses information made confidential by other statutes such as section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

(1) if maintained on paper or microfilm, kept separate from adult files and records;

(2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and

(3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). For purposes of section 58.007(c), a “child” is a person ten years of age or older and under seventeen years of age at the time of the reported conduct. *See id.* § 51.02(2). The submitted information consists of law enforcement records of a juvenile who engaged in delinquent conduct after September 1, 1997. *See* Fam. Code § 51.03 (defining “delinquent conduct” for purposes of Fam. Code § 58.007). You do not indicate, nor does it appear, that any of the exceptions in section 58.007 apply to the information in the report; therefore, the submitted information is confidential under section 58.007(c) of the Family Code and must be withheld in its entirety under section 552.101 of the Government Code.<sup>4</sup>

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

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<sup>4</sup>As our ruling is dispositive, we need not address your arguments against disclosure.

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 "Britni Fabian".

Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/dls

Ref: ID# 486849

Enc. Submitted documents

c: Requestor  
(w/o enclosures)