



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2013

Mr. Orlando Juarez, Jr.
For the Webb Consolidated Independent School District
Escamilla, Poneck & Cruz, L.L.P.
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2013-09915

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# 489908.

The Webb Consolidated Independent School District (the "district"), which you represent, received a request for all documents related to a named high school principal. You claim the submitted information is excepted from disclosure under sections 552.101, 552.108, 552.132, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note some of the information in Exhibit B and all of the information in Exhibit C was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2013-08782 (2013). In this prior ruling, we ruled the district may withhold some of the information at issue under section 552.108(a)(1) of the Government Code and must withhold some of the information at issue under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based, we conclude the district may rely on Open Records Letter No. 2013-08782 as a previous determination and withhold the information in Exhibits B and C to the extent the information in the current request is identical to the information

previously requested and ruled upon by this office.¹ See Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not subject to Open Records Letter No. 2013-08782, we will address your arguments against disclosure.

Next, we note the United States Department of Education (“DOE”) Family Policy Compliance Office 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 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.² 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”). We note, however, that relying on a statement from the director of the DOE’s Family Policy and Regulations Office, this office has determined that FERPA does not prevent a governmental body from making the education records of deceased students available to members of the public. See Open Records Decision No. 524 (1989). This conclusion is consistent with the premise that an individual’s privacy rights lapse on the individual’s death. See *Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.—Texarkana 1979, writ ref’d n.r.e.); see also *Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146–47 (N.D. Tex. 1979) (“action for invasion of privacy can be maintained only by a living individual whose privacy is invaded”) (quoting Restatement of Torts 2d). Thus, the information relating to the deceased student is not subject to FERPA and may not be withheld on that basis.

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108 is applicable to the information at issue. See *id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to a pending

¹As our ruling for this information is dispositive, we need not address your arguments against its disclosure.

²A 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>.

investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration that the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld.

You state the Webb County District Attorney's Office (the "district attorney's office") has a pending case related to the documents submitted as Exhibit B. You have provided a statement from the district attorney's office objecting to release of the information at issue because its release would interfere with the pending investigation and prosecution. Based on these representations, we conclude the district may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code on behalf of the district attorney's office.³ *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).

Section 552.101 of the Government Code 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 protected by the Medical Practice Act (the "MPA"), subtitle B of title 3 of the Occupations Code. *See* Occ. Code §§ 151.001-168.202. Section 159.002 of the MPA provides, in part:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.
- (b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.
- (c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

³As our ruling is dispositive for the information at issue, we need not address your argument under section 552.132 of the Government Code against its disclosure.

Id. § 159.002(a)-(c). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. Upon review, we find Exhibit E constitutes a medical record. Accordingly, the district must withhold Exhibit E under section 552.101 of the Government Code in conjunction with the MPA.⁴

You seek to withhold portions of Exhibit D pursuant to section 552.137 of the Government Code. Section 552.137 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 at issue, which you have marked, are not excluded by subsection (c). Therefore, the district must withhold the personal e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release.⁵

In summary, to the extent the information in the current request is identical to the information previously requested and ruled upon by this office, we conclude the department must continue to rely on Open Records Letter No. 2013-08782 as a previous determination and withhold the information in accordance with that ruling. The district may withhold the remaining information in Exhibit B under section 552.108(a)(1) of the Government Code on behalf of the Webb County District Attorney’s Office. The district must withhold the medical record in Exhibit E under section 552.101 of the Government Code in conjunction with the MPA. And the district must withhold the personal e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their release. 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.texasattorneygeneral.gov/open/>

⁴As our ruling is dispositive as to this information, we need not address your remaining argument against disclosure.

⁵We note Open Records Decision No. 684 (2009) is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

[orl_ruling_info.shtml](#), 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Tim Neal
Assistant Attorney General
Open Records Division

TN/dls

Ref: ID# 489908

Enc. Submitted documents

c: Requestor
(w/o enclosures)