



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 21, 2013

Mr. W. Montgomery Meitler
Assistant Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2013-10553

Dear Mr. Meitler:

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# 491008 (TEA PIR # 19522).

The Texas Education Agency (the "agency") received a request for a specified report. You state you have redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the United State Department of Education (the "DOE"). *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. 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>.

Section 552.101 of the Government Code excepts from public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”² Gov’t Code § 552.101. This office has repeatedly held that the transfer of confidential information between governmental agencies does not destroy the confidentiality of that information. *See* Attorney General Opinions H-917 (1976), H-836 (1974); Open Records Decision Nos. 561 (1990), 414 (1984), 388 (1983), 272 (1981), 183 (1978). These opinions recognize the need to maintain an unrestricted flow of information between state agencies. In Open Records Decision No. 561, we considered whether the same rule applied regarding information deemed confidential by a federal agency. In that decision, we noted the general rule that section 552 of title 5 of the United States Code, the federal Freedom of Information Act (“FOIA”), applies only to federal agencies and does not apply to records held by state agencies. ORD 561 at 6. Further, we stated information is not confidential when in the hands of a Texas agency simply because the same information is confidential in the hands of a federal agency. *Id.* However, in the interests of comity between state and federal authorities and to ensure the flow of information from federal agencies to Texas governmental bodies, we concluded, “when information in the possession of a federal agency is ‘deemed confidential’ by federal law, such confidentiality is not destroyed by the sharing of the information with a governmental body in Texas. In such an instance, [section 552.101] requires a local government to respect the confidentiality imposed on the information by federal law.” *Id.* at 7.

The agency and the DOE inform this office the submitted information was provided to the agency by the DOE. The DOE informs this office that it considers the submitted information confidential under the provisions found in sections 552(b)(5) and 552(b)(7)(A) of title 5 of the United States Code. *See* 5 U.S.C. § 552(b)(5), (7)(A). Therefore, we conclude the agency must withhold the submitted information under section 552.101 of the Government Code in conjunction with federal law.³

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.

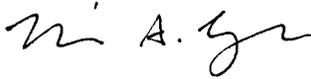
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

³As our ruling is dispositive, we need not address your remaining argument against disclosure of the submitted information.

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,



Nicholas A. Ybarra
Assistant Attorney General
Open Records Division

NAY/ac

Ref: ID# 491008

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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(w/o enclosures)