



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 30, 2013

Ms. Haley Turner
Attorney for Mart Independent School District
Walsh, Anderson, Gallegos, Green, and Trevino, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2013-13145

Dear Ms. Turner:

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# 494736.

The Mart Independent School District (the "district"), which you represent, received a request for e-mails sent to or from a named individual in the past year pertaining to "answer documents," "scantrons," "TAKS," "state testing," or "11th grade." You state the district has made some information available to the requestor. We understand the district is redacting information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ You claim the remaining requested information is excepted from

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 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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. This exception encompasses information protected by other statutes. You raise section 552.101 in conjunction with section 39.0302 of the Education Code, which provides, in relevant part, the following:

(a) During [a Texas Education Agency (“agency”)] investigation or audit of a school district under Section 39.0301(e) or (f), an accreditation investigation under Section 39.057(a)(8) or (13), or an investigation by the State Board for Educator Certification of an educator for an alleged violation of an assessment instrument security procedure established under Section 39.0301(a), the commissioner [of education] may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence that is located in this state.

...

(d) All information and materials subpoenaed or compiled in connection with an investigation or audit described by Subsection (a):

(1) are confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) are not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to any person other than:

(A) the commissioner [of education] or the State Board for Educator Certification, as applicable;

(B) agency employees or agents involved in the investigation, as applicable; and

(C) the office of the attorney general, the state auditor’s office, and law enforcement agencies.

²We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than those submitted to this office.

Act of May 26, 2013, 83rd Leg., R.S., S.B. 123, § 1 (to be codified as an amendment to Educ. Code § 39.0302(a)); Educ. Code § 39.0302(d). This section makes confidential all information subpoenaed or compiled in connection with an agency investigation of a school district for potential violation of assessment instrument security. Educ. Code § 39.0302; *see also id.* § 39.0301(e). You inform us the submitted information was compiled by the district in connection with its own internal investigation into potential violations of test assessment instrument security. Although you inform us the district provided its information to the agency, you fail to demonstrate the submitted information was subpoenaed or compiled in connection with the agency's investigation into the matter under section 39.0301(e). Accordingly, section 39.0302 is not applicable to the submitted information and the district may not withhold any of the information at issue under section 552.101 of the Government Code on that basis. As you raise no other exception to disclosure, the submitted 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/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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/ag

Ref: ID# 494736

Enc. Submitted documents

c: Requestor
(w/o enclosures)