



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 16, 2013

Mr. Joe R. Tanguma
Counsel for New Caney Independent School District
Walsh, Anderson, Gallegos, Green, and Trevino, P.C.
10375 Richmond Avenue, Suite 750
Houston, Texas 77042-4196

OR2013-14328

Dear Mr. Tanguma:

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# 496527.

The New Caney Independent School District (the "district"), which you represent, received a request for documentation and communications regarding a named student. You state the district will provide most of the responsive information to the requestor. You state the district has redacted portions of the submitted information 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

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental 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. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoc.pdf>.

sections 552.101, 552.107, and 552.111 of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

Initially, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. *See* Gov't Code § 552.301. Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply within ten business days of receiving the written request. *See id.* § 552.301(b). You state the district received the initial request for information on May 16, 2013, and clarifications of the request on May 19, 2013 and May 20, 2013. *See id.* § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed). Accordingly, the district's ten-business-day deadline was June 4, 2013. However, the envelope containing the district's request for a ruling bears a meter-mark of June 7, 2013. *See* Gov't Code § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail). Accordingly, we conclude the district failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information at issue is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Although you assert the

²Although you raise section 552.101 of the Government Code in conjunction with Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, this office has concluded that section 552.101 does not encompass discovery privileges. *See* Open Records Decision Nos. 676 at 1-2 (2002), 575 at 2 (1990). Additionally, although you also raise Texas Rule of Evidence 503 and Texas Rule of Civil Procedure 192.5, we note the proper exceptions to raise when asserting the attorney-client privilege and work product privilege for information not subject to section 552.022 of the Government Code are sections 552.107 and 552.111 of the Government Code, respectively. *See* Open Records Decision Nos. 677 (2002), 676 at 1-2.

³This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

submitted information is excepted from release under sections 552.107 and 552.111 of the Government Code, these sections are discretionary in nature and serve only to protect a governmental body's interests. As such, the district's claims under these sections are not compelling reasons to overcome the presumption of openness. *See* ORDs 677 at 10 (attorney work-product privilege under section 552.111 is not compelling reason to withhold information under section 552.302), 676 at 12 (attorney-client privilege under section 552.107 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party); *see also* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Therefore, the district may not withhold any portion of the submitted information under section 552.107 or section 552.111. However, because section 552.101 of the Government Code can provide a compelling reason for non-disclosure, we will address the applicability of that section to the submitted information.

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 other statutes make confidential. Section 101.104 of the Texas Civil Practice and Remedies Code provides:

- (a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].
- (b) Neither the existence nor the amount of the insurance is subject to discovery.

Civ. Prac. & Rem. Code § 101.104. Section 101.104 prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *See City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.—Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under Tort Claims Act). However, section 101.104 does not make insurance information confidential for purposes of section 552.101 of the Government Code. *See* Open Records Decision No. 551 at 3 (1990) (provisions of section 101.104 "are not relevant to the availability of the information to the public"). The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See* Gov't Code §§ 552.005 (Act does not affect scope of civil discovery), .006 (Act does not authorize withholding public information or limit availability of public information to public except as expressly provided by Act); *see also* Attorney General Opinion JM-1048 (1989); Open Records Decision No. 575 (1990) (*overruled in part by* Open Records Decision No. 647 (1996)) (section 552.101 does not encompass discovery privileges). Thus, we find section 101.104 of the Civil Practice and Remedies Code does not make the information at issue confidential for purposes of section 552.101 of the Government Code. Therefore, the district may not withhold any of the submitted information under section 552.101 of the Government Code

in conjunction with section 101.104 of the Civil Practice and Remedies Code. As you raise no further exceptions to disclosure, the district must release the submitted information.

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,



Kristi L. Wilkins
Assistant Attorney General
Open Records Division

KLW/bhf

Ref: ID# 496527

Enc. Submitted documents

c: Requestor
(w/o enclosures)