



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 27, 2013

Ms. Melanie L. Hollmann  
Counsel for the Ector Independent School District  
Atkins, Hollmann, Jones, Peacock, Lewis & Lyon, P.C.  
3800 East 42<sup>nd</sup> Street, Suite 500  
Odessa, Texas 79762

OR2013-16845

Dear Ms. Hollmann:

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# 500897.

The Ector County Independent School District (the "district"), which you represent, received a request for specified information pertaining to the requestor's client from specified time periods, the job descriptions for principal and assistant principal for a specified time period, and specified information concerning each campus principal and assistant principal in the district. We have received your letter and a copy of the request for information.

Initially, you indicate the district has withheld some of the requested 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 (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent 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>1</sup> Accordingly, we will not address the applicability of FERPA to any of this information. See 34 § C.F.R. 99.3 (defining "education record").

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<sup>1</sup>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>.

Next, we must address the district's obligations under the Act with respect to the remaining requested information that is not subject to FERPA. Section 552.301 of the Government Code prescribes the procedures that 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 request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See id.* § 552.301(b). Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under the Act is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You state the district received the request for information on June 27, 2013. You state the district was closed for business on June 28, 2013; July 1, 2013, through July 5, 2013; July 12, 2013; and July 19, 2013. Thus, the district's ten- and fifteen-business-day deadlines were July 23, 2013, and July 30, 2013, respectively. However, as of the date of this letter, the district has not submitted to this office comments explaining why the remaining requested information at issue should be excepted from disclosure or a copy of the specific information requested or representative samples. Accordingly, we find the district failed to comply with 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 requirements of section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302 (where request for attorney general decision does not comply with requirements of section 552.301, information at issue is presumed to be public); *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) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential under other law. Open Records Decision No. 150 (1977). By failing to comply with the procedural requirement of the Act, the district has waived any discretionary exceptions to disclosure. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions.) Furthermore, because the district has not submitted a copy of the remaining requested information that is not subject to FERPA to this office for our review, we have no basis for finding it confidential by law. Thus, to the extent the remaining requested information existed when the request for information was received, we have no choice but to order the district to release this information in accordance with section 552.302 of the Government Code. If you believe this information is confidential and may not lawfully be

released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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](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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/bhf

Ref: ID# 500897

Enc. Submitted documents

c: Requestor