



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 30, 2014

Mr. Orlando "Jay" Juarez, Jr.
Counsel for the United Independent School District
J. Cruz and Associates, LLC
216 West Village Boulevard, Suite 202
Laredo, Texas 78041

OR2014-07167

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# 521273.

The United Independent School District (the "district"), which you represent, received a request for four categories of information, including the district's 2013-2014 Code of Conduct, the disciplinary history of a named student, any school records regarding the student's grades and attendance, and all records, videos, and documentation directly related to the expulsion of the student. You claim the requested information is excepted from disclosure under sections 552.114, 552.132, and 552.135 of the Government Code.¹ We have considered the exceptions you claim.

You raise section 552.114 of the Government Code for the requested information. *See* Gov't Code §§ 52.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed

¹Although the district also raises section 552.026 of the Government Code, we note section 552.026 is not an exception to disclosure. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act ("FERPA") of 1974. Gov't Code § 552.026.

this office 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.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"). Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA. Such determinations under FERPA must be made by the educational authority in possession of the education records.³ Should the district determine all or portions of the requested information consist of "education records" that must be withheld under FERPA, the district must dispose of any such information in accordance with FERPA, rather than the Act.

Next, we must address the district's obligations under the Act. Section 552.301 of the Government Code describes the obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to section 552.301(e) of the Government Code, the governmental body 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* Gov't Code § 552.301(e). You state you received the request for information on February 7, 2014. However, as of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply or a copy of the specific information requested or a representative sample of such information. Consequently, we find the district failed to comply with the requirements of section 552.301.

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 requested information 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);

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>.

³In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

see also Open Records Decision No. 630 (1994). Although sections 552.132 and 552.135 of the Government Code can provide compelling reasons for nondisclosure of information under section 552.302, we have no basis for concluding the requested information is excepted under these sections because the district failed to submit any portion of the requested information to us for our review. Therefore, we have no choice but to order the district to release the responsive information in accordance with section 552.302 of the Government Code. If the district believes the information is confidential and may not lawfully be released, the district 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, 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,



Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 521273

Enc. Submitted documents

c: Requestor