



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 9, 2014

Ms. Jenny Wells  
General Counsel  
Leander Independent School District  
P.O. Box 218  
Leander, Texas 78646

OR2014-11845

Dear Ms. Wells:

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# 529216 (ORR# 981).

The Leander Independent School District (the "district") received a request for a list of library books checked out of a specified library by a named individual during a specified time period. You claim the requested information is excepted from disclosure under sections 552.101 and 552.124 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note, and you acknowledge, the United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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

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<sup>1</sup>We 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 that submitted to this office.

records for the purpose of our review in the open records ruling process under the Act.<sup>2</sup> 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”). You assert FERPA may apply to the requested documents. Because our office is prohibited from reviewing records to determine whether FERPA applies, we will not address the applicability of FERPA to the information at issue. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the district. However, we will consider your remaining arguments against disclosure of the requested information.

Section 552.124 of the Government Code provides, in relevant part,

(a) A record of a library or library system, supported in whole or in part by public funds, that identifies or serves to identify a person who requested, obtained, or used a library material or service is excepted from [disclosure] unless the record is disclosed:

...

(2) under [s]ection 552.023[.]

...

(b) A record of a library or library system that is excepted from required disclosure under this section is confidential.

Gov't Code § 552.124(a)(2), (b); *see also* Open Records Decision No. 100 at 3 (1975) (identifying information or library patrons in connection with object of their attentions is confidential by constitutional law). Upon review, we agree the requested information reveals the identity of a library patron. However, the requestor states, and you acknowledge, the requestor is the legal guardian of the minor child whose records are at issue. As the minor individual's legal guardian, the requestor is the child's authorized representative. Section 552.023(a) of the Government Code provides, “[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests.” Gov't Code § 552.023(a). Pursuant to section 552.124(a)(2), the district may not withhold information subject to section 552.023 under section 552.124(a) of the Government Code. *See id.* §§ 552.023(a), .124(a)(2). Accordingly, because the requestor has a right of access to the

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<sup>2</sup>A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

requested information pursuant to section 552.023, the district may not withhold the information under section 552.124.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. You also seek to withhold the requested information under section 552.101 in conjunction with common-law privacy. However, as noted above, the requestor is a legal guardian of the minor child whose privacy interest is at issue. *See* Gov’t Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Thus, the requestor has a right of access to information pertaining to the child that would otherwise be confidential under common-law privacy. Accordingly, the district may not withhold the requested information from this requestor under section 552.101 on the basis of common-law privacy. Therefore, the district must release the requested information to this requestor.

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,



Claire V. Morris Sloan  
Assistant Attorney General  
Open Records Division

CVMS/som

Ref: ID# 529216

Enc. Submitted documents

c: Requestor  
(w/o enclosures)