



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 25, 2014

Mr. Albert E. Tovar
Counsel for Carrizo Springs Consolidated Independent School District
Gale, Wilson & Sanchez
111 East Travis, 19th Floor
San Antonio, Texas 78205

OR2014-12975

Dear Mr. Tovar:

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# 531158 (GW&S File No. 5698; TEA ID# 22152).

The Carrizo Springs Consolidated Independent School District (the "district"), which you represent, received a request for records related to any investigation by the district regarding the requestor's client and records provided to the Texas Education Agency (the "TEA") or the State Board for Educator Certification by the district pertaining to the requestor's client. You state the district will redact social security numbers in accordance with section 552.147(b) of the Government Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.108, 552.111, 552.114, 552.116, 552.117, and 552.135 of the Government Code. Further, we understand the district notified the TEA of the request and of its right to submit arguments to this office as to why

¹Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting an attorney general decision under the Act. *See* Gov't Code § 552.147(b). However, we note the requestor has a right of access to her client's social security number under section 552.023 of the Government Code. *See id.* § 552.023(a); Open Records Decision No. 481 at 7 (1987) (privacy theories not implicated when individual requests information concerning herself).

the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the TEA. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note 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 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").

You assert FERPA applies to portions of the submitted information. We note you have submitted unredacted education records for our review. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to any of the submitted information. Such determinations under FERPA must be made by the educational authority in possession of such records.³ Likewise, we do not address your arguments under section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (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 will, however, consider the remaining arguments against disclosure of the submitted information.

Section 552.116 of the Government Code provides the following:

- (a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, a municipality, a school district, a hospital district, or a joint board operating under Section 22.074, Transportation Code, including any audit relating to the criminal history background check of a public school employee, is excepted from [required public disclosure].

²A 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>.

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.

If information in an audit working paper is also maintained in another record, that other record is not excepted from [public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, the bylaws adopted by or other action of the governing board of a hospital district, a resolution or other action of a board of trustees of a school district, including an audit by the district relating to the criminal history background check of a public school employee, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. The TEA states the information at issue consists of audit working papers maintained by the TEA's Student Assessment Division Security Task Force in conducting an investigation of testing irregularities in the administration of statewide assessment instruments. The TEA informs us the audit is authorized by section 39.057(a)(8) of the Education Code, which permits the Commissioner of Education to authorize special accreditation investigations to be conducted in response to an allegation regarding or an analysis using a statistical method result indicating a possible violation of an assessment instrument security procedure. *See* Educ. Code § 39.057 (listing circumstances in which the commissioner shall authorize investigations). Upon review, we agree section 552.116 is applicable in this instance. Therefore, the district may withhold the submitted information under section 552.116 of the Government Code on behalf of the TEA.⁴

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.

⁴As our ruling is dispositive, we need not address the remaining arguments against disclosure.

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,



Miriam A. Khalifa
Assistant Attorney General
Open Records Division

MAK/akg

Ref: ID# 531158

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. W. Montgomery Meitler
Senior Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494
(w/o enclosures)