



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 6, 2016

Mr. Miguel Salinas
Staff Attorney
Brownsville Independent School District
1900 Price Road
Brownsville, Texas 78521-2417

OR2016-07742

Dear Mr. Salinas:

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# 606030 (ORR# 8359).

The Brownsville Independent School District (the "district") received a request for security camera video recordings for a specified location during five specified dates and times. You state the district does not maintain information related to some of the specified dates and times.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code.² We have considered the exception you claim and reviewed the submitted information.

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

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

²We note we asked the district to provide additional information pursuant to section 552.303 of the Government Code. *See Gov't Code* § 552.303(c)-(d) (if attorney general determines information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice). We have received and considered the correspondence sent by the district pursuant to that request. Although you do not cite to section 552.101 of the Government Code in your brief, we understand you to raise this exception based on the substance of your argument.

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.³ 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 have submitted unredacted records for our review. Our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. Accordingly, we will not address the applicability of FERPA to the submitted records, nor do we address your argument under section 552.114 of the Government Code, except to note FERPA is not applicable to law enforcement records maintained by the district's police department (the "department") that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. Thus, to the extent the submitted information was created for and is maintained by the department for a law enforcement purpose, the submitted information is not subject to FERPA or section 552.114 of the Government Code and it may not be withheld on that basis. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), 552.114 (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). In that instance, we will consider your remaining argument against release of 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. We understand you to claim section 552.101 in conjunction with section 418.182 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the "HSA"). Section 418.182 provides in part:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

Id. § 418.182(a). The fact information may generally be related to a security system does not make the information *per se* confidential under section 418.182. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provision controls scope of its protection).

³A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality provision, a governmental body asserting section 418.182 must adequately explain how the responsive information falls within the scope of the statute. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

We understand you to argue the submitted information is confidential under section 418.182 of the Government Code. You explain the information at issue consists of images from district campus security cameras that were installed to better monitor potential criminal and terrorist activity. You explain the recordings at issue reveal the location of a security system used to protect public property from acts of terrorism or related criminal activity. You argue release of the information would reveal specific information about the technical details of cameras at a district campus, including the location and coverage of the security cameras, and would also reveal areas not captured by the cameras that may be used to mask criminal and terrorist activity. Based on your representations and our review of the information at issue, we conclude the district has demonstrated the information at issue falls within the scope of section 418.182(a). Accordingly, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.182(a) of the Government Code. *See generally* *Tex. Dep't of Pub. Safety v. Abbott*, 310 S.W.3d 670 (Tex. App.—Austin 2010, no pet.) (case construing section 418.182 of the HSA, which ruled recorded images necessarily relate to specifications of security system that recorded them).

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,



Claire V. Morris Sloan
Assistant Attorney General
Open Records Division

CVMS/som

Ref: ID# 606030

Enc. Submitted documents

c: Requestor
(w/o enclosures)