



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 5, 2009

Mr. Brian S. Nelson  
General Counsel  
Lone Star College System  
5000 Research Forest Drive  
The Woodlands, Texas 77381-4356

OR2009-07723

Dear Mr. Nelson:

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# 345382.

The Lone Star College System (the "system") received nineteen requests from the same requestor for information related to the requestor and a student disciplinary referral, including information in the possession of the system's police department (the "department"), from January 5, 2009 until the date of the request.<sup>1</sup> You state you do not have a portion of the requested information.<sup>2</sup> You claim that the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304* (providing that interested party may submit comments stating why information should or should not be released).

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<sup>1</sup>You state the system sought and received clarification of the information requested from the requestor. *See Gov't Code § 552.222(b)* (stating that if information requested is unclear, governmental body may ask requestor to clarify or narrow request).

<sup>2</sup>The Act does not require a governmental body to release information that did not exist when a request for information was received, create responsive information, or obtain information that is not held by or on behalf of the system. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986).

Initially, you state the system has withheld some of the responsive information pursuant to section 552.114 of the Government Code. This office generally has treated "student record" information that is protected by section 552.114 of the Government Code as the equivalent of "education record" information that is protected by the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. *See* Gov't Code § 552.114(a); Open Records Decision No. 634 at 5 (1995). The United States Department of Education Family Policy Compliance Office has informed this office that FERPA 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.<sup>3</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 submitted, among other things, unredacted education records for our review. We will not address the applicability of FERPA to the information at issue, other than to note a student has a right of access to his own education records.<sup>4</sup> *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. A governmental body may not rely on section 552.103 of the Government Code to deny a student his right under FERPA to inspect his own education records. *See* Open Records Decision No. 431 at 3 (1985).

However, it appears that portions of the submitted information are not subject to FERPA. The submitted incident report consists of law enforcement records prepared by the department for a law enforcement purpose. FERPA excludes from the definition of "education records" law enforcement records maintained by 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, .8. Thus, the submitted incident report is not subject to FERPA; we will therefore address your arguments unless the Act against disclosure of that information.

Next, we find the incident report is subject to section 552.022 of the Government Code. Section 552.022(a)(1) provides for the required public disclosure of "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body," unless the information is excepted from disclosure under section 552.108 of the Government Code or expressly confidential under other law. Gov't Code § 552.022(a)(1). Although you raise section 552.103 of the Government Code, section 552.103 is a discretionary exception to disclosure that protects the governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas

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<sup>3</sup>A copy of this letter may be found on the attorney general's website, available at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>4</sup>Determinations under FERPA must be made by the educational authority in possession of the education record. In the future, if the system does obtain parental or an adult student's consent to submit unredacted education records, and the system seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 (1999) (governmental body may waive section 552.103). As such, section 552.103 is not other law that makes information confidential for the purposes of section 552.022. Therefore, the system may not withhold the incident report under section 552.103. As you raise no further exceptions, the incident report must be released to the 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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/dls

Ref: ID# 345382

Enc. Submitted documents

c: Requestor  
(w/o enclosures)