



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 11, 2009

Ms. Andrea Sheehan
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2009-08067

Dear Ms. Sheehan:

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# 345881.

The Carrollton-Farmers Branch Independent School District (the "district"), which you represent, received a request for specified e-mails of a named district employee and "all the Level One final recommendations at Creekview" occurring over a specified period of time. You state the district is redacting some of the responsive information pursuant to the federal Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the requestor has excluded the identifying information of students from his request. Thus, any such information contained within the submitted documents is not responsive to the present request for information. We have marked information that is nonresponsive to this request, and this ruling will not address that information.

¹We note our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made; therefore, we will not address the applicability of FERPA to any of the submitted information.

Next, you assert that the present request for information is, in part, a standing request. It is implicit in several provisions of the Act that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 452 at 2-3 (1986), 87 (1975). Consequently, a governmental body is not required to comply with a standing request to supply information on a periodic basis as such information is prepared in the future. *See* Attorney General Opinion JM-48 at 2 (1983); *see also* Open Records Decision Nos. 476 at 1 (1987), 465 at 1 (1987). Thus, the only information encompassed by this request consists of documents that the district maintained or had a right of access to as of the date that it received the request.

You indicate that a portion of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-05695 (2009). In that decision, we ruled that certain e-mails, submitted here as Exhibit B, are not subject to the Act and thus need not be released by the district. Additionally, we note that submitted Exhibit D-1 was also the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2009-07174 (2009). In that ruling, we found the district must withhold portions of the information at issue under section 552.101 of the Government Code. As we have no indication that the law, facts, or circumstances on which the prior rulings were based have changed, the district may continue to rely on Open Records Letter No. 2009-05695 as a previous determination and dispose of the information in Exhibit B in accordance with the prior ruling. Further, the district must continue to rely on Open Records Letter No. 2009-07174 and dispose of the information in Exhibit D-1 in accordance with the prior ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure).

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 section encompasses information protected by other statutes, including article 15.27 of the Code of Criminal Procedure, which provides in part:

- (a) A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board who the agency believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h), shall attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains that the individual is enrolled as a student in a public primary or secondary school, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of that arrest or referral

within 24 hours after the arrest or referral is made, or on the next school day. If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. If the individual is a student, the superintendent shall promptly notify all instructional and support personnel who have responsibility for supervision of the student. All personnel shall keep the information received in this subsection confidential. The State Board of Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven days after the date the oral notice is given, the law enforcement agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent or the person designated by the superintendent. Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code. The information contained in the notice may be considered by the superintendent or the superintendent's designee in making such a determination.

...

(f) A person who receives information under this article may not disclose the information except as specifically authorized by this article. A person who intentionally violates this article commits an offense. An offense under this subsection is a Class C misdemeanor.

Crim. Proc. Code art. 15.27(a), (f). You state that the information you have marked under article 15.27 consists of information referencing receipt of Notices to Schools provided to the district in accordance with article 15.27(a). Because subarticles 15.27(a) and 15.27(f) make information confidential in the hands of school personnel who receive the information pursuant to article 15.27(a), we find the information you have marked under article 15.27 is confidential and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses section 414.009 of the Government Code, which provides in pertinent part:

(a) A person who is a member or employee of the [crime stoppers advisory council] or who accepts a report of criminal activity on behalf of a crime stoppers organization commits an offense if the person intentionally or knowingly divulges to a person not employed by a law enforcement agency

the content of a report of a criminal act or the identity of the person who made the report without the consent of the person who made the report.

Gov't Code § 414.009. We understand the information you have marked under section 414.009 represents reports, tips, and information submitted to a crime stopper's organization. Accordingly, we conclude that this information is confidential under section 414.009 of the Government Code and must be withheld under section 552.101 of the Government Code.

Section 552.101 also encompasses the common-law right of privacy, which protects information if (1) it contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 682-82. The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. Upon review, we find that the information you have marked pertains to individuals who are not identified. Thus, this information does not implicate any individual's privacy interest. Accordingly, the district may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the district may continue to rely upon Open Records Letter No. 2009-05695 as a previous determination and dispose of the information in Exhibit B in accordance with that ruling. The district must continue to rely upon Open Records Letter No. 2009-07174 as a previous determination and dispose of the information in Exhibit D-1 in accordance with that ruling. The district must withhold the information you have marked under section 552.101 of the Government Code in conjunction with (1) article 15.27 of the Code of Criminal Procedure and (2) section 414.009 of the Government Code. The remaining information must be released.

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, 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,

A handwritten signature in black ink, appearing to read 'Matt Entsminger', with a stylized flourish at the end.

Matt Entsminger
Assistant Attorney General
Open Records Division

MRE/dls

Ref: ID# 345881

Enc. Submitted documents

c: Requestor
(w/o enclosures)