



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

Ms. Betsy Hall Bender
Attorney at Law
P.O. Box 26715
Austin, Texas 78755-0715

OR2009-10185

Dear Ms. Bender:

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# 350066 (SCUCISD PIA No. 09-033).

The Schertz-Cibolo-Universal City Independent School District (the "district"), which you represent, received a request for copies of all documents submitted to the Texas Education Agency regarding the requestor's termination, as well as all documents considered during the decision to terminate the requestor. You state that you have released some of the responsive information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.114 and 552.135 of the Government Code and section 552.101 of the Government Code in conjunction with the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ We have considered the exceptions you claim and reviewed the submitted information.

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 consent, unredacted, personally identifiable information contained in education records for the purposes 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

¹Although you also raise section 552.026 of the Government Code as an exception to disclosure, we note that section 552.026 is not an exception to disclosure. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with FERPA. Gov't Code § 552.026.

²A copy of this letter may be found on the attorney general's website, available at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You have submitted, among other things, redacted and unredacted education records. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.³ Likewise, we do not address your argument under section 552.114 of the Government Code. *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). However, to the extent you determine the information you have submitted is not protected by FERPA, we will consider your other argument against disclosure.

You also assert the submitted information is excepted under section 552.135 of the Government Code, which provides in part:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under the exception must clearly identify to this

³In the future, if the district does obtain parental or an adult student's 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.

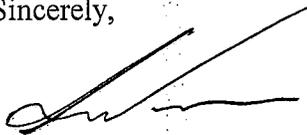
office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.301(e)(1)(A). We note that section 552.135 protects an informer's identity, but it does not generally encompass protection for witness statements. In this instance, you indicate that the submitted information reveals the identities of students of the district who reported possible violations of Title IX, 20 U.S.C. § 1681. Based on this representation and our review of the information at issue, we conclude the district must withhold the identity of the student who reported the possible violation, which we have marked, under section 552.135 of the Government Code. However, the district has failed to demonstrate how the remaining information reveals the identities of informers for section 552.135 purposes. Accordingly, none of the remaining information may be withheld on this basis.

In summary, this ruling does not address the applicability of section 552.114 of the Government Code or FERPA to the submitted information. The district must withhold the information we have marked under section 552.135 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,



Ana Carolina Vieira
Assistant Attorney General
Open Records Division

ACV/eeg

Ref: ID# 350066

Enc. Submitted documents

c: Requestor
(w/o enclosures)