



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 22, 2009

Mr. Rusty Meurer  
Kazen, Meurer & Perez, L.L.P.  
Attorneys at Law  
P.O. Box 6237  
Laredo, Texas 78042

OR2009-18136

Dear Mr. Meurer:

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# 366118.

The Laredo Community College (the "college") received a request for "all agendas and minutes of the South Campus staff meetings . . . in the Senator Judith Zaffirini Library between the dates of September 1, 2004 to August 31, 2009."<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.104, 552.107, 552.111, 552.114, 552.116, 552.117, 552.120, 552.1235, 552.124, 552.131, and 552.137 of the Government Code and protected under Rule 503 of the Texas Rules of Evidence.

Initially, we note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), 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 purpose of our review in the open records

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<sup>1</sup>As you have not submitted a copy of the written request for information, we take our description from your brief.

ruling process under the Act.<sup>2</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”). Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA.<sup>3</sup> Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>4</sup>

We must address the college’s procedural obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov’t Code § 552.301(e)(1)(A)-(D). You state the college received the request on October 6, 2009. However, as of the date of this letter, you have not submitted to this office written comments stating the reasons why the exceptions you have raised would allow the information to be withheld, a copy of the written request for information, or provided a copy or representative sample of the information requested. Consequently, we find the college has failed to comply with the requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a compelling reason exists to withhold the information from disclosure. See *id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806, 811 (Tex. App.—Amarillo 2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); see also Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists

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<sup>2</sup>A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

<sup>3</sup>Likewise, we also do not address your claim 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).

<sup>4</sup>In the future, if the college does obtain parental consent to submit unredacted education records and the college seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

where some other source of law makes the information confidential or where third party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). In failing to comply with the requirements of section 552.301, the college has waived the raised discretionary exceptions. *See* Open Records Decision No. 522 (1989) (discretionary exceptions in general). Accordingly, the requested information may not be withheld under a discretionary exception. Furthermore, although the college states the request may implicate third party interests and raises mandatory exceptions to disclosure that may not be waived, because no information has been submitted for our review, we have no basis for finding any of it confidential by law. Therefore, we have no choice but to order the college to release the information at issue. This ruling does not address the applicability of FERPA to the requested information. Should the college determine that all or portions of the requested information consists of "education records" that must be withheld under FERPA, the college must dispose of that information in accordance with FERPA, rather than the Act. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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, toll free, at (888) 672-6787.

Sincerely,



Pamela Wissemann  
Assistant Attorney General  
Open Records Division

PFW/cc

Ref: ID# 366118

Enc. Submitted documents

c: Requestor  
(w/o enclosures)