



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 30, 2009

Mr. Rusty Meurer
Kazen, Meurer & Pérez L.L.P
Attorney for Laredo Community College
P.O. Box 6237
Laredo, Texas 78042-6237

OR2009-18425

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# 366123.

The Laredo Community College (the "college"), which you represent, received a request for "all agendas and minutes of the Bibliographic Instruction Committee or Library Instruction Committee . . . in the Harold R. Yearly Library between the dates of September 1, 2004 to August 31, 2009."¹ 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. You also claim that release of the requested information may implicate the proprietary interests of third parties. Accordingly, pursuant to section 552.305 of the Government Code, you were required to notify any interested third parties of the request for information and of their right to submit arguments to this office as to why their information should not be released to the requestor. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions you claim.

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

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 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 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.³ Such determinations under FERPA must be made by the educational authority in possession of the education records.⁴

Next, we must address the college's obligations under section 552.301 of the Government Code, which prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e) of the Government Code, the 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. See Gov't Code § 552.301(e). As of the date of this letter, you have not submitted to this office comments explaining why the stated exceptions apply, a copy of the written request for information, or a copy or representative sample of the requested information. Consequently, we find that the college has failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id* § 552.302; see *City of*

² 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>.

³ 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).

⁴ 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.

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, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302 of the Government Code); *see also* Open Records Decision No. 630 (1994). Generally, a governmental body may demonstrate a compelling reason to withhold information by showing the information is made confidential by another source of law or affects third party interests. *See* ORD 630. By failing to comply with the requirements of the Act, the college waived its discretionary claims against disclosure. *See* Open Records Decision Nos. 522 (1989) (discretionary exceptions in general), 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions), 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the requested information may not be withheld under any of the claimed discretionary exceptions. Further, 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, 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,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/rl

Ref: ID# 366123

Enc. Submitted documents

c: Requestor
(w/o enclosures)