



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 17, 2011

Ms. Chris G. Elizalde  
Attorney for Italy Independent School District  
Walsh, Anderson, Brown, Aldridge & Gallegos, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2011-06894

Dear Ms. Elizalde:

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# 418978.

The Italy Independent School District (the "district"), which you represent, received a request for (1) any and all information and documents that would acknowledge, reveal, or substantiate alleged sexual assaults involving district/ Italy High School students; (2) confirmation of punishment; (3) verification that the police were called during a specified time period concerning said alleged sexual assaults; (4) any and all documentation that would reveal or acknowledge that the district's staff, teachers, coaches, principals and administrators were aware of any alleged fights or assaults, involving district athletic staff, coaches, and their students during a specified time period, specifically discussions of assaults taking place involving sons or relatives with a specified last name; and (5) a copy of the call log of the superintendent's district provided, district-paid, district-supplied cellular telephone for a specified time period, including text messages sent to and from the superintendent from the board of trustees.<sup>1</sup> You state the requestor is being provided with most of the responsive information, and that some of the requested information does not now or no longer exist.<sup>2</sup>

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<sup>1</sup> We note the requestor, in this instance, agreed to exclude the names and personal identifying information of any juvenile or minor, including social security numbers. The requestor also agreed to exclude any text messages mentioning or identifying juveniles or minors that were sent to and from the superintendent from the board of trustees. Thus, any such information contained within the submitted documents is not responsive to the present request for information.

<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 or to prepare new information in response to a request. *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 Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

You also state the district has redacted any student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>3</sup> You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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

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<sup>3</sup> The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. 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>.

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.

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(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 the submitted documents, each entitled "Notification to School of Arrest", were provided to the district by the Italy Police Department in accordance with and referencing article 15.27 of the Code of Criminal Procedure. You also state that the requestor in this matter is a private citizen not authorized under article 15.27 to receive a copy of the documents at issue. 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 submitted information must be withheld under section 552.101 of the Government Code in conjunction with article 15.27 of the Code of Criminal Procedure.

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,



Kirsten Brew  
Assistant Attorney General  
Open Records Division

KB/sdk

Ref: ID# 418978

Enc. Submitted documents.

c: Requestor  
(w/o enclosures)