



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 12, 2011

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204

OR2011-14817

Dear Ms. McGowan:

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# 432810 (ORR# 10435).

The Dallas Independent School District (the "district") received requests from two different requestors. The July 20, 2011, requestor seeks personnel records, alleged misconduct records, and other specified documents pertaining to this requestor's client. The July 22, 2011, requestor seeks information regarding complaints lodged against three named companies, records during a specified time period pertaining to student enrollment and billing regarding one of the named companies, and information during a specified time period evidencing "per-pupil allocation for Supplemental Education Services." You state the district will provide some of the requested personnel records to the July 20, 2011, requestor. You claim the submitted information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note the submitted information includes unredacted student education records. The United States Department of Education Family Policy Compliance Office has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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.¹ 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”). Thus, because this office is prohibited from reviewing an education record for the purpose of determining whether appropriate redactions have been made under FERPA, we will not address the applicability of FERPA to the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education records. We will consider whether or not the submitted information is excepted from disclosure under the Act.

Next, we note the submitted information is subject to section 552.022 of the Government Code, which states, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov’t Code § 552.022(a)(1). The submitted information consists of a completed investigation. Pursuant to section 552.022(a)(1) of the Government Code, a completed investigation is expressly public unless it either is excepted under section 552.108 of the Government Code or is expressly confidential under other law. You claim the information is excepted under section 552.103 of the Government Code. This section, however, is a discretionary exception to disclosure that protects a governmental body’s interest and may be waived. *See id.* § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body’s position in litigation and does not itself make information confidential). As such, it is not other law that makes information confidential for the purposes of section 552.022. Consequently, the district may not withhold the submitted information under section 552.103 of the Government Code. We note portions of the submitted

¹A copy of this letter may be found on the attorney general’s website, <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

information may be subject to sections 552.102 and 552.117 of the Government Code.² Thus, we will consider the applicability of sections 552.102 and 552.117 to the submitted information.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). The Texas Supreme Court held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). The district must withhold the district employees’ dates of birth we have marked in the submitted information under section 552.102(a) of the Government Code.

Section 552.117(a)(1) of the Government Code excepts from disclosure the current and former home addresses and telephone numbers, emergency contact information, social security numbers, and family member information of current or former officials or employees of a governmental body who request this information be kept confidential under section 552.024 of the Government Code. Act of May 24, 2011, 82nd Leg., R.S., S.B. 1638, § 2 (to be codified as an amendment to Gov’t Code § 552.117(a)). Whether information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. The district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made.

We have marked district employees’ personal information in the remaining information. You have not informed us whether or not the employees timely chose to not allow public access to their personal information. Therefore, if the employees timely requested confidentiality for their personal information, the district must withhold the information we have marked pursuant to section 552.117(a)(1) of the Government Code. If the employees did not timely request confidentiality, the district may not withhold the marked information under section 552.117(a)(1) of the Government Code.

In summary, the district must withhold the dates of birth we have marked under section 552.102(a) of the Government Code. If the employees whose personal information we have marked timely requested confidentiality for their personal information under section 552.024 of the Government Code, the district must withhold the marked information pursuant to section 552.117(a)(1) of the Government Code. The district must release the remaining information.

²The Office of the Attorney General will raise mandatory exceptions on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

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,

A handwritten signature in cursive script that reads "Leah B. Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/dls

Ref: ID# 432810

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)