



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 30, 2013

Ms. Pam Young Kaminsky
Attorney
Fort Bend Independent School District
16431 Lexington Boulevard
Sugarland, Texas 77479

OR2013-01714

Dear Ms. Kaminsky:

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# 480237 (ORR 2012-13-248).

The Fort Bend Independent School District (the "district") received a request for specified tests from a specified time period.¹ You claim the submitted information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We note the submitted information includes unredacted education records. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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

¹We note the district sought and received clarification of the request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

ruling process under the Act.² Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA should be made, we will not address the applicability of FERPA to the submitted information, other than to note that parents have a right of access to their own child's education records. 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. The DOE has also informed this office that if a state law prohibits a school district from providing a parent with access to the education records of his or her child and an opportunity to inspect and review the record, then the state statute conflicts with FERPA, and an educational agency or institution must comply with FERPA if it wishes to continue to receive federal education funds. Letter advisement from Ellen Campbell, Family Compliance Office, U.S. Department of Education to Robert Patterson, Open Records Division, Office of the Texas Attorney General (April 9, 2001). *See Equal Employment Opportunity Comm'n v. City of Orange*, 905 F. Supp. 381, 382 (E.D. Tex. 1995); Open Records Decision No. 431 (1985) (FERPA prevails when in conflict with state law). Because the educational authority in possession of the education records is now responsible for determining the applicability of FERPA, we will only consider the claimed exception under the Act for the requested information.

We note that the tests at issue are subject to section 26.006 of the Education Code. Section 26.006 provides in relevant part:

(a) A parent is entitled to:

- (1) review all teaching materials, instructional materials, and other teaching aids used in the classroom of the parent's child; and
- (2) review each test administered to the parent's child after the test is administered.

(b) A school district shall make teaching materials and tests readily available for review by parents. The district may specify reasonable hours for review.

Educ. Code § 26.006(a), (b). In this instance, the requestor is a parent of the child to whom the tests at issue were administered. Thus, section 26.006 is applicable to the tests at issue. However, you claim that these tests are excepted from disclosure under section 552.122 of the Government Code, an exception to disclosure found in the Act. We note that statutes that govern access to specific information prevail over the Act's general exceptions. *See* Open Records Decision Nos. 623 (1994), 525 (1989) (as a general rule Act's exceptions do not apply to information that other statutes make public). Accordingly, we find that the requestor's statutory right of access to the tests at issue under section 26.006 of the Education

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

Code prevails over section 552.122 of the Government Code. Consequently, the information at issue must be released to the requestor.

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,



Sean Nottingham
Assistant Attorney General
Open Records Division

SN/som

Ref: ID# 480237

Enc. Submitted documents

c: Requestor
(w/o enclosures)

