



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 25, 2013

Mr. Eric G. Rodriguez
Counsel for Schertz-Cibolo-Universal City Independent School District
Walsh, Anderson, Gallegos, Green and Treviño, P.C.
P.O. Box 460606
San Antonio, Texas 78246

OR2013-04813

Dear Mr. Rodriguez:

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# 482272.

The Schertz-Cibolo-Universal City Independent School District (the "district"), which you represent, received a request for all educational records pertaining to a district student, specified operational and procedural manuals, and specified information concerning two specified district employees. You claim some of the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have not submitted the requested operational and procedural manuals. To the extent the district maintains information responsive to this part of the request for information that existed on the date the request was received, we assume the district has released it. If the district has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

Next, we understand the district has withheld educational records pertaining to the district student based on the provisions of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent or an

adult student's 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"). Because our office is prohibited from reviewing the education records at issue to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of this information, other than to note that parents have a right of access to their child's educational records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 § C.F.R. 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education records. However, to the extent the educational records the district has withheld are not governed by FERPA, we assume the district has released this information. If the district has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* ORD 664. We will, however, consider your arguments against disclosure of the submitted information.

You claim portions of the college transcripts submitted as pages AG-0001 through AG-0009 are excepted from disclosure under section 552.102(b) of the Government Code. This section excepts from disclosure all information in transcripts of professional public school employees other than the employee's name, the courses taken, and the degree obtained. Gov't Code § 552.102(b); Open Records Decision No. 526 (1989). Thus, with the exception of the district employees' names, courses taken, and degrees obtained, the district must withhold the college transcripts submitted as pages AG-0001 through AG-0009 under section 552.102(b) of the Government Code.

You raise section 21.048 of the Education Code for pages AG-0010 and AG-0011. 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, such as section 21.048, which addresses teacher certification examinations. Section 21.048(c-1) provides the following:

The results of an examination administered under this section are confidential and are not subject to disclosure under [the Act], unless:

- (1) the disclosure is regarding notification to a parent of the assignment of an uncertified teacher to a classroom as required by Section 21.057; or
- (2) the educator has failed the examination more than five times.

¹A 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>.

Educ. Code § 21.048(c-1). You assert the information at issue consists of teacher certification examination results. You inform us that subsections 21.048(c-1)(1) and (2) are not applicable in this instance. Therefore, the district must withhold the information we have marked on pages AG-0010 and AG-0011 pursuant to section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. However, the remaining information at issue does not consist of teacher certification examination results. Accordingly, the remaining information on pages AG-0010 and AG-0011 is not confidential under section 21.048(c-1) and, thus, may not be withheld under section 552.101 on that basis.

In summary, with the exception of the district employees' names, courses taken, and degrees obtained, the district must withhold the college transcripts submitted as pages AG-0001 through AG-0009 under section 552.102(b) of the Government Code. The district must withhold the information we have marked on pages AG-0010 and AG-0011 under section 552.101 of the Government Code in conjunction with section 21.048(c-1) of the Education Code. The district must release the remaining information.

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,



Kenneth Leland Conyer
Assistant Attorney General
Open Records Division

KLC/bhf

Ref: ID# 482272

Enc. Submitted documents

c: Requestor
(w/o enclosures)