



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2014

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

OR2014-08061

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# 522258.

The Dallas Independent School District (the "district") received a request for eighteen variables related to student testing data. 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.

Initially, we address your contention that complying with the request "will require extensive personnel and programming time." Although a governmental body is not required to create new information in response to a request, it does have a duty to make a good-faith effort to relate a request for information to information in existence at the time of the request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); *see also* Open Records Decision No. 561 at 8–9 (1990). A governmental body may not refuse to comply with a request on the ground of administrative inconvenience. *See Indus. Found v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976). You have submitted information that you indicate is responsive to the request. Accordingly, we will address your arguments against public disclosure of the submitted information.

You argue some of the information is protected by 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, 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 these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of such records. We will, however, address the applicability of the claimed exceptions to the submitted information.

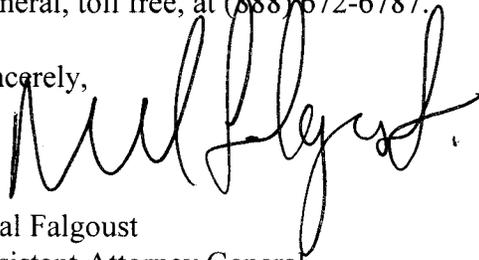
Section 552.122 of the Government Code excepts from disclosure "[a] test item developed by an educational institution that is funded wholly or in part by state revenue[.]" Gov't Code § 552.122(a). In Open Records Decision No. 626 (1994), this office determined the term "test item" in section 552.122 includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." *Id.* at 6. The question of whether specific information falls within the scope of section 552.122(b) must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Section 552.122 also protects the answers to test questions when the answers might reveal the questions themselves. *See* Attorney General Opinion JM-640 at 3 (1987); ORD 626 at 8. We understand the district is an educational institution funded wholly or in part by state revenue. You state a portion of the submitted information consists of a test answer key. You explain the release of this key would compromise the effectiveness of this exam, which is still used by the district. Based on these representations and our review, we agree the district may withhold the answer key portion of the submitted information, a representative sample of which we marked, under section 552.122(a) of the Government Code. However, you have not demonstrated how the remaining information consists of test items or answers to test items. Accordingly, the district may not withhold any of the remaining information under section 552.122(a) of the Government 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.

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>.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Neal Falgoust". The signature is written in a cursive style with a large, stylized initial "N".

Neal Falgoust
Assistant Attorney General
Open Records Division

NF/som

Ref: ID# 522258

Enc. Submitted documents

c: Requestor
(w/o enclosures)