



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

October 31, 2014

Mr. Brian L. Rose  
Assistant General Counsel  
Harris County District Attorney's Office  
1201 Franklin, Suite 600  
Houston, Texas 77002

OR2014-19729

Dear Mr. Rose:

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# 541531.

The Harris County District Attorney's Office (the "district attorney's office") received a request for seventeen categories of information pertaining to the conviction of a named individual. You state the district attorney's office has released some information. You claim the submitted information is excepted from disclosure under sections 552.101 of the Government Code. We have received comments from the requestor. *See Gov't Code* § 552.304 (permitting interested third party to submit comments to attorney general stating reasons why requested information should or should not be released). We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, you inform us the submitted information contains student 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") does not permit state and local educational authorities to disclose to this office, without parental consent,

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<sup>1</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See Open Records Decision Nos. 499 (1988), 497 (1988)*. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.<sup>2</sup> 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”). We note the district attorney’s office, which maintains the information at issue, is not an educational institution. *See* Open Records Decision No. 390 at 3 (1983) (City of Fort Worth is not an “educational agency” within FERPA). However, the district attorney’s office informs us the student records at issue were transferred to the district attorney’s office from the Houston Independent School District. FERPA permits an educational agency or institution to release education records to a third party under certain enumerated circumstances. 20 U.S.C. § 1232g(b). The federal regulations provide that a third party that receives such information from an educational agency may use the information only for the purposes for which the disclosure was made. *Id.* § 1232g(b)(4)(B); 34 C.F.R. § 99.33(a). Because the information at issue are student records received as a result of a transfer made pursuant to FERPA, we will not address the applicability of FERPA to the student records as our office is prohibited from reviewing education records to determine whether appropriate redactions have been made under FERPA. We will, however, address the applicability of the claimed exceptions to the submitted information.

Next, we must address the district attorney’s office’s obligations under the Act. Section 552.301 of the Government Code describes the procedural obligations placed on a governmental body that receives a written request for information it wishes to withhold. Pursuant to subsection 552.301(b), the governmental body must request a ruling from this office and state the exceptions to disclosure that apply within ten business days after receiving the request. *See* Gov’t Code § 552.301(b). Pursuant to subsection 552.301(e) of the Government Code, a governmental body is required to submit to this office within fifteen business days of receiving the request (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See id.* § 552.301(e). You inform us the district attorney’s office received the request for information on May 27, 2014. Accordingly, you were required to request a ruling pursuant to subsection 552.301(b) by June 10, 2014, and submit the information required by subsection 552.301(e) by June 17, 2014. However, the envelope in which the district attorney’s office requested a ruling and provided the submitted information bears a postmark date of August 25, 2014. *See id.* § 552.308(a)(1) (describing rules for calculating submission dates of documents sent via first class United States mail, common

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<sup>2</sup>We have posted a copy of the DOE’s letter on the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

or contract carrier, or interagency mail). Consequently, we conclude the district attorney's office failed to comply with the procedural requirements mandated by section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Act results in the legal presumption the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You claim the submitted information is subject to section 552.101 of the Government Code. Because this exception can provide a compelling reason to withhold information, we will address its applicability to 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. Section 552.101 of the Government Code encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. You raise this section for some of the submitted information. However, we note section 58.007 is inapplicable in this instance because the conduct at issue occurred prior to January 1, 1996. Accordingly, we will address your argument under former section 51.14 of the Family Code.

Prior to its repeal by the Seventy-fourth Legislature, former section 51.14(d) provided for the confidentiality of juvenile law enforcement records. Law enforcement records pertaining to conduct occurring before January 1, 1996, are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Former section 51.14 applies only to records of a "child," which is defined as a person who is ten years of age or older and under seventeen years of age when the conduct occurred. *See* Fam. Code § 51.02(2). Upon review, we find Exhibit B involves juvenile delinquent conduct or conduct indicating a need for supervision that occurred before January 1, 1996. *See id.* § 51.023(a), (b) (defining "delinquent conduct" and "conduct indicating a need for supervision"). Therefore, the district attorney's office must withhold Exhibit B under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code.<sup>3</sup>

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Section 552.101 also encompasses section 62.0132 of the Government Code. This provision authorizes the Office of Court Administration of the Texas Judicial System to create a standardized juror questionnaire form to be used in courts throughout the state. *See id.* § 62.0132(a). Section 62.0132(f) states information contained in a completed questionnaire is confidential and not subject to the Act. You assert Exhibit C consists of information contained in completed juror questionnaires. Based on your representation, we agree Exhibit C consists of information contained in completed juror questionnaires. Accordingly, the district attorney's office must withhold Exhibit C under section 552.101 in conjunction with section 62.0132(f) of the Government Code.

In summary, the district attorney's office must withhold Exhibit B under section 552.101 of the Government Code in conjunction with former section 51.14 of the Family Code. The district attorney's office must withhold Exhibit C under section 552.101 in conjunction with section 62.0132(f) of the Government Code. The district attorney's office 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/dls

Ref: ID# 541531

Enc. Submitted documents

c: Requestor  
(w/o enclosures)