



January 12, 2015

Mr. Joseph E. Hoffer  
Counsel for Riverwalk Education Foundation, Inc.  
Schulman, Lopez & Hoffer LLP  
517 Soledad Street  
San Antonio, Texas 78205-1508

OR2015-00538

Dear Mr. Hoffer:

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# 547701.

The Riverwalk Education Foundation, Inc. d/b/a School of Science and Technology (the "SST"), which you represent, received a request for 1) the requestor's clients' education records, 2) information regarding a named employee, and 3) specified policies and training materials.<sup>1</sup> You state SST is releasing some information to the requestor. You state SST has redacted information pursuant to sections 552.130 and 552.147 of the Government Code and

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<sup>1</sup>You state SST sought and received clarification of the information requested. See Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Open Records Decision No. 684 (2009).<sup>2</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.117 of the Government Code. You further inform us the Federal Bureau of Investigation (the "FBI") claims the submitted information is excepted from disclosure under section 552.108 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>4</sup>

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purposes of our review in the open records ruling process under the Act.<sup>5</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"). You have submitted redacted and unredacted education records for our review. Because our office is prohibited from reviewing these education 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, other than to note a parent's legal representative has a right of access to his child's education

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<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold ten specified categories of information without the necessity of requesting an attorney general decision. However, the Texas legislature amended section 552.130 to allow a governmental body to redact the information described in subsection 552.130(a) of the Government Code without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d),(e). Thus, the statutory amendment to section 552.130 supercedes Open Records Decision No. 684. Therefore, a governmental body may redact information subject to section 552.130(a) only in accordance with section 552.130, not Open Records Decision No. 684. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147(b).

<sup>3</sup>We note SST did not timely raise section 552.108 of the Government Code pursuant to section 552.301 of the Government Code. *See* Gov't Code § 552.301(b). Nevertheless, because the interests under section 552.108 of a governmental body other than the one that failed to comply with section 552.301 can provide a compelling reason for non-disclosure, we will consider whether SST may withhold the submitted information under section 552.108 on behalf of the FBI. *See id.* §§ 552.007, .302, .352.

<sup>4</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.

<sup>5</sup>A 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>.

records and this right of access prevails over a claim under sections 552.103, 552.108, and 552.117 of the Government Code. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; Open Records Decision No. 431 (1985) (information subject to right of access under FERPA may not be withheld pursuant to statutory predecessor to Gov't Code § 552.103); *see also Equal Employment Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (holding FERPA prevails over inconsistent provision of state law). Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>6</sup> However, we will consider SST's claimed exceptions to the extent the requestor does not have a right of access to the submitted information under FERPA.

Next, we note some of the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a) provides, in relevant part, the following:

(a) [T]he following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or 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; [and]

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(1), (3). The submitted information includes completed evaluations that are subject to section 552.022(a)(1). SST must release the completed evaluations pursuant to section 552.022(a)(1), unless they are excepted from disclosure under section 552.108 of the Government Code or expressly made confidential under the Act or other law. *See id.* § 552.022(a)(1). Some of the submitted information also consists of information in an account, voucher, or contract relating to the receipt or expenditure of funds by a governmental body that is subject to section 552.022(a)(3). SST must release this information pursuant to section 552.022(a)(3), unless it is made confidential under the Act or other law. *See id.* § 552.022(a)(3). Although SST raises section 552.103 of the Government Code and the FBI raises section 552.108 of the Government Code for this information, those exceptions are discretionary in nature and do not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4

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<sup>6</sup>In the future, if SST does obtain parental consent to submit unredacted education records and SST seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

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 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 177 at 3 (1977) (statutory predecessor to section 552.108 subject to waiver). Therefore, SST may not withhold any of the information subject to section 552.022 under section 552.103. Further, SST may not withhold any of the information subject to section 552.022(a)(3) under section 552.108. However, SST raises section 552.101 of the Government Code for the information subject to section 552.022(a)(1), and section 552.101 makes information confidential for purposes of section 552.022. Accordingly, we will consider the applicability of that exception to the information subject to section 552.022(a)(1). Further, because information subject to section 552.022(a)(1) may be withheld under section 552.108, we also will consider the FBI's objection to release of the information not subject to section 552.022(a)(3) on that basis. Finally, we will consider SST's arguments for the remaining information not subject to section 552.022.

Section 552.108(a) of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov’t Code § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the information at issue would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706, 710 (Tex. 1977). Section 552.108 may be invoked by the proper custodian of information relating to an investigation or prosecution of criminal conduct. Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency possesses information relating to a pending case of a law enforcement agency, the non-law enforcement agency may withhold the information under section 552.108(a)(1) if it demonstrates the information relates to the pending case and provides this office with a representation from the law enforcement agency that wishes to withhold the information. SST informs our office the FBI objects to the release of the information at issue because it pertains to a pending criminal investigation being conducted by the FBI. Based on this representation, we conclude the release of the information not subject to section 552.022(a)(3) would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. App.—Houston [14th Dist.] 1975) (delineating law enforcement interests present in active cases), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, SST may withhold the information not subject to section 552.022(a)(3) on behalf of the FBI under section 552.108(a)(1) of the Government Code.<sup>7</sup> As you raise no other exceptions to disclosure of the information subject to section 552.022(a)(3), SST must release that information to the requestor.

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<sup>7</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this 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,



Kristi L. Godden  
Assistant Attorney General  
Open Records Division

KLG/cz

Ref: ID# 547701

Enc. Submitted documents

c: Requestor  
(w/o enclosures)