



January 15, 2015

Ms. Lucie S. Tredennick
Counsel for the City of San Antonio
Thompson & Horton, LLP
Pheonix Tower, Suite 200
3200 Southwest Freeway
Houston, Texas 77027

OR2015-00857

Dear Ms. Tredennick:

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# 550188 (PIC ID No. 6737).

The City of San Antonio and PreK 4 SA (collectively, the "city"), which you represent, received a request for records of students attending pre-kindergarten through 11th grade for the 2014-2015 school year.¹ The city claims the submitted information is excepted from disclosure under sections 552.114 and 552.148 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted representative sample of information.²

¹We note the city sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing 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).

²We 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.

Initially, the city states it only has information pertaining to pre-kindergarten students. Additionally, the city states it does not maintain the requested information in the format sought by the requestor. The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983). However, a governmental body must make a good-faith effort to relate a request to information that is within its possession or control. See Open Records Decision No. 561 at 8–9 (1990). As the city has submitted information for our review, we presume the city has made a good faith effort to relate the request to information it maintains.

Next, the city indicates it is withholding some of the requested information pursuant to the Family Educational Rights and Privacy Act (“FERPA”), section 1232g of title 20 of the United States Code. We note the United States Department of Education Family Policy Compliance Office has informed this office that 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 purpose of our review in the open records ruling process under the Act.³ 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 education records to determine whether appropriate redactions under FERPA have been or should be made, we will not address the applicability of FERPA to any of the information at issue. See 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. Likewise, we do not address the city’s arguments under section 552.114 of the Government Code. See Gov’t Code §§ 552.026 (incorporating FERPA into Act), .114 (excepting from disclosure “student records”); Open Records Decision No. 539 (1990) (determining same analysis applies under section 552.114 of Government Code and FERPA). However, we will consider the city’s remaining argument against disclosure of the submitted information.

Section 552.148 of the Government Code provides the following:

- (a) In this section, “minor” means a person younger than 18 years of age.

³A copy of this letter may be found on the Office of the Attorney General’s website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

(b) The following information maintained by a municipality for purposes related to the participation by a minor in a recreational program or activity is excepted from the requirements of Section 552.021:

- (1) the name, age, home address, home telephone number, or social security number of the minor;
- (2) a photograph of the minor; and
- (3) the name of the minor's parent or legal guardian.

Gov't Code § 552.148. The city states the submitted information relates to the participation by minors in a city recreational program or activity. Based on the city's representations and our review, we find the city must withhold the submitted information pursuant to section 552.148 of the Government Code.

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, 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,



David L. Wheelus
Assistant Attorney General
Open Records Division

DLW/bhf

Ref: ID# 550188

Enc. Submitted documents

c: Requestor
(w/o enclosures)