



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

April 13, 2015

Ms. Maria Miller
Legal Assistant
Dallas County Community College District
1601 South Lamar Street, Suite 208
Dallas, Texas 75215-1816

OR2015-07005

Dear Ms. Miller:

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# 559784.

The Dallas County Community College District (the "district") received several requests from two requestors for information related to a specified course offered by the district, to include information related to specified essay questions. You state you will release some information to the requestors. You claim the requested information is excepted from disclosure under sections 552.114 and 552.122 of the Government Code. We have considered the exceptions you claim. We have also considered comments submitted by the first requestor. *See Gov't Code §552.304* (interested party may submit written comments stating why information should or should not be released).

Initially, we note the first requestor specifies he is not seeking the substantive portions of the specified essay questions, but instead he seeks a redacted version of the essay questions at issue. However, we understand no such information exists. The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 452 at 3 (1986), 362 at 2 (1983).

Next, you note some of the information requested by the second requestor was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2015-03189 (2015). In Open Records Letter No. 2015-03189, we ruled, to the extent the information at issue in that ruling had not been previously released, the district may withhold such information under section 552.122 of the Government Code. We have no indication the law, facts, or circumstances on which Open Records Letter No. 2015-03189 was based have changed. Accordingly, we conclude the district must continue to rely on Open Records Letter No. 2015-03189 as a previous determination and withhold or release the previously ruled upon information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure).

Next, we note 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"), 20 U.S.C. § 1232g, 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"). You state the remaining responsive information consists of records of students that contain personally identifiable information. Because our office is prohibited from reviewing these records to determine the applicability of FERPA, we will not address its applicability to any of the requested information. Such determinations under FERPA must be made by the district. Likewise, we do not address your argument under section 552.114 of the Government Code.² *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).

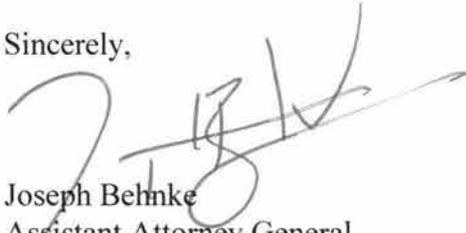
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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>.

²As we are able to make this determination, we need not address the requestor's argument the district failed to comply with section 552.301 of the Government Code.

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 'J. Behnke', is written over the typed name and title.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

Ref: ID# 559784

c: Requestor