



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 13, 2015

Mr. W. Montgomery Meitler
Senior Counsel
Office of Legal Services
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

OR2015-09330

Dear Mr. Meitler:

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# 563986 (TEA PIR# 23868).

The Texas Education Agency (the "agency") received a request for all correspondence and public comments received from the general public since a specified date regarding the La Marque Independent School District's (the "district") accreditation status.¹ You state the agency will provide some of the requested information to the requestor. You inform us the agency has redacted from the information submitted to this office student-identifying information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, and personal e-mail addresses pursuant to section 552.137 of the Government Code in accordance with Open

¹You state the agency 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 overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

Records Decision No. 684 (2009).² You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state you notified an interested third party of the request and of that party's right to submit arguments to this office as to why the submitted information should not be released.³ See Gov't Code § 552.304 (interested party may submit written comments regarding availability of requested information). We have considered the exception you claim and reviewed 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. You claim some of the submitted information is excepted from required disclosure under section 552.101 in conjunction with the common-law physical safety exception. The Texas Supreme Court has recognized a common-law physical safety exception to required disclosure. *Tex. Dep't of Pub. Safety v. Cox Tex. Newspapers, L.P. & Hearst Newspapers, L.L.C.*, 343 S.W.3d 112 (Tex. 2011) (holding "freedom from physical harm is an independent interest protected under law, untethered to the right of privacy"). Pursuant to the common-law physical safety exception, "information may be withheld [from public release] if disclosure would create a substantial threat of physical harm." *Id.* In applying this new standard, the court noted "deference must be afforded" law enforcement experts regarding the probability of harm, but further cautioned, "vague assertions of risk will not carry the day." *Id.* at 119.

The submitted information consists of correspondence from a member of the public to agency officials regarding the correspondent's opinions about why the district should not be allowed to remain open. You argue the correspondent's identifying information you have marked in the submitted information should be withheld under the common-law physical safety exception because the correspondent requested anonymity based on her belief the people in her community are passionate and would not hesitate to do her harm if they discovered what she said. Upon review, however, we find you have not demonstrated that a substantial risk of physical harm to the individual at issue would result from disclosure of her identity. Consequently, the agency may not withhold any of the information you marked

²The 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 student consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. 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>. Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including personal e-mail addresses under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

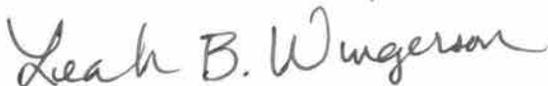
³As of the date of this letter, we have not received any comments from a third party.

under section 552.101 of the Government Code in conjunction with the common-law physical safety exception. As you have not claimed any other exceptions to disclosure, the agency must release the submitted 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, 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,



Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/bhf

Ref: ID# 563986

Enc. Submitted documents

c: Requestor
(w/o enclosures)