



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 11, 2015

Mr. W. Lee Auvenshine  
Deputy Superintendent  
Human Resources & Legal Services  
Waxahachie Independent School District  
411 North Gibson Street  
Waxahachie, Texas 75165

OR2015-19002

Dear Mr. Auvenshine:

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# 578830.

The Waxahachie Independent School District (the "district") received a request for a copy of all requests for information related to the requestor's client made to the district during a specified time period and all documents released by the district in response to those requests. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, 552.111, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

We note the requestor excluded from the request copies of the requests for information made to the district by the requestor's office and any documents previously released by the district to the requestor's office in response to those requests. Accordingly, this information, which

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<sup>1</sup>We note you have marked some documents with section 552.101 of the Government Code but did not state on what basis you seek to withhold those documents under that exception. Accordingly, we will not address that exception for those documents. See Gov't Code § 552.301(e)(1)(A).

we have marked, is not responsive to the present request. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.<sup>2</sup>

You have redacted some of the responsive information pursuant to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g. The United States Department of Education Family Policy Compliance Office (the “DOE”) has informed this office that FERPA 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.<sup>3</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”). Because our office is prohibited from reviewing these 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. Such determinations under FERPA must be made by the educational authority in possession of such records. We will, however, address the applicability of the claimed exceptions to the submitted information.

You have identified some of the responsive information as also responsive to previous requests for information, as a result of which this office issued Open Records Letter Nos. 2015-09262 (2015) and 2015-13886 (2015). As to that information, in Open Records Letter No. 2015-09262 this office determined, in part, the district must: (1) withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code; (2) must withhold the information we marked under section 552.117(a)(1) of the Government Code if the individual whose information is at issue elected to keep that information confidential under section 552.024 of the Government Code; and (3) must release the remaining information. Also, in Open Records Letter No. 2015-13886 this office determined the district (1) must withhold the information we have marked under section 552.101 of the Government Code in conjunction with common-law privacy; (2) may withhold the information it has marked under section 552.107 of the Government Code and the information we have marked under section 552.111 of the Government Code; (3) must withhold the information we have marked under section 552.117(a)(1) of the Government Code if the employees at issue timely elected to withhold that information; (4) must withhold the information marked under section 552.137 of the Government Code; (5) must withhold the information marked under

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<sup>2</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

<sup>3</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>.

section 552.147(a-1) of the Government Code; and (6) must release the remaining responsive information, but may only release any copyrighted information in accordance with copyright law. We have concluded there has been no change in the law, facts, or circumstances on which the previous rulings were based. *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). Accordingly, the district must rely on Open Records Letter Nos. 2015-09262 and 2015-13886 as previous determinations and withhold or release the information at issue in accordance with those rulings.<sup>4</sup>

You have identified a portion of the remaining responsive information as also responsive to a previous request for information, as a result of which this office issued Open Records Letter No. 2015-16110 (2015). As to that information, in Open Records Letter No. 2015-16110 this office determined the district must: (1) withhold the information we marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code; (2) withhold the information we marked under section 552.101 of the Government Code in conjunction with section 261.201(a)(1) of the Family Code; (3) withhold certain information we indicated under section 552.117(a)(1) of the Government Code, to the extent the employee at issue timely elected to keep her information confidential pursuant to section 552.024 of the Government Code; (4) withhold the e-mail addresses you marked and we marked under section 552.137 of the Government Code, unless the owners of the e-mail addresses affirmatively consent to their release; and (5) release the remaining responsive information.

However, the submitted information contains certain information pertaining to the current requestor's client, which was previously withheld in Open Records Letter No. 2015-16110 under section 552.117(a)(1), to the extent the requestor's client made a timely election under section 552.024. The current requestor has a right of access to her client's information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (person or person's authorized representative has a special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Accordingly, we find the circumstances have changed with respect to the current requestor's client's information which was withheld in Open Records Letter No. 2015-16110 under section 552.117(a)(1) of the Government Code. Therefore, the district may not rely on Open Records Letter No. 2015-16110 as a previous determination with respect to the current requestor's client's information at issue. *See* ORD 673 (so long as law, facts, and circumstances on which prior ruling was based have not

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<sup>4</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). Nevertheless, we have no indication the law, facts, and circumstances on which the prior ruling was based have changed with regard to the remaining information at issue. Thus, the district must continue to rely on Open Records Letter No. 2015-16110 as a previous determination and withhold or release the remaining information at issue in accordance with that ruling. *See id.*<sup>5</sup>

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See Gov’t Code* § 552.137(a)-(c). Upon review, we find the district must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure.

In summary, the district must rely on Open Records Letter Nos. 2015-09262 and 2015-13886 as previous determinations and withhold or release the information at issue in accordance with those rulings. With the exception of the requestor’s client’s information, the district must continue to rely on Open Records Letter No. 2015-16110 as a previous determination and withhold or release the information at issue in accordance with that ruling. The district must withhold the e-mail addresses you have marked under section 552.137 of the Government Code, unless the owners affirmatively consent to their public disclosure. The district must release the remaining information.<sup>6</sup>

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

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<sup>5</sup>As we are able to make this determination, we need not address your arguments against disclosure of this information.

<sup>6</sup>We note the requestor has a right of access to some of her client’s information being released pursuant to section 552.023 of the Government Code. *See Gov’t Code* § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves).

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 'Cristian Rosas-Grillet', with a stylized flourish at the end.

Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/som

Ref: ID# 578830

Enc. Submitted documents

c: Requestor  
(w/o enclosures)