



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 22, 2015

Mr. Kevin W. Cole  
Counsel for the Mason Independent School District  
Powell & Leon, L.L.P.  
115 Wild Basin Road, Suite 106  
Austin, Texas 78746

OR2015-26917

Dear Mr. Cole:

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# 591512.

The Mason Independent School District (the "district"), which you represent, received a request for specified correspondence.<sup>1</sup> You state you have released some information. You state the district will withhold e-mail addresses of members of the public under section 552.137 of the Government Code pursuant to Open Records Decision No. 684 (2009).<sup>2</sup> You claim the submitted information is excepted from disclosure under

---

<sup>1</sup>You state the district sought and received clarification of the information requested. *See* Gov't Code § 552.222(b) (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). Additionally, although you raise section 552.103 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

<sup>2</sup>Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain information, including an e-mail address of a member of the public under section 552.137 of the Government Code, without the necessity of requesting an attorney general decision.

sections 552.107 and 552.111 of the Government Code.<sup>3</sup> We have considered the exceptions you claim and reviewed the submitted information.

We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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.<sup>4</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. We further note the requestor is a parent of one of the students to whom the submitted information pertains. Because our office is prohibited from reviewing these education records to determine the applicability of FERPA, we will not address the applicability of FERPA to any of the submitted records, other than to note that parents have a right of access under FERPA to their own child's education records and their right of access prevails over claims under the deliberative process privilege encompassed by section 552.111 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. The DOE also has informed our office, however, a parent's right of access under FERPA to information about the parent's child does not prevail over an educational institution's right to assert the attorney-client privilege. Therefore, we will consider your assertion of the attorney-client privilege under section 552.107 of the Government Code for the submitted information. We will also consider the district's claimed exceptions to the extent the requestor does not have a right of access to the submitted information under FERPA.

Next, you inform us the information submitted as Exhibit B was the subject of a previous request for information, as a result of which this office issued Open Records Letter

---

<sup>3</sup>Although you also raise section 552.022 of the Government Code, we note section 552.022 is not an exception to disclosure. Rather, section 552.022 enumerates categories of information that are not excepted from disclosure unless they are made confidential under the Act or other law. *See* Gov't Code § 552.022. Further, although you raise Texas Rule of Evidence 503, we note the proper exception to raise when asserting the attorney-client privilege in this instance is section 552.107 of the Government Code. *See* Open Records Decision No. 676 at 1-2 (2002). Additionally, although you raise section 552.103 of the Government Code, you have not provided any arguments to support this exception. Therefore, we assume you have withdrawn your claim this section applies to the submitted information. *See* Gov't Code §§ 552.301, .302.

<sup>4</sup>A 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>.

No. 2015-26595 (2015). In that ruling, we determined the district may withhold the information the district marked under section 552.107(1) of the Government Code and the information we marked under section 552.111 of the Government Code and must release the remaining information. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. Accordingly, we conclude the district may rely on Open Records Letter No. 2015-26595 as a previous determination and withhold or release Exhibit B in accordance with that ruling.<sup>5</sup> 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 that information is or is not excepted from disclosure). As you raise no exceptions to disclosure for the remaining information, the district must release the remaining 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,



Nicholas A. Ybarra  
Assistant Attorney General  
Open Records Division

NAY/bhf

Ref: ID# 591512

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

<sup>5</sup>As our determination is dispositive, we need not address your arguments against disclosure of Exhibit B.