



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 22, 2016

Mr. Hector M. Benavides  
Counsel for La Vernia Independent School District  
Walsh, Gallegos, Treviño, Russo & Kyle, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246

OR2016-01681

Dear Mr. Benavides:

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# 595038.

The La Vernia Independent School District (the "district"), which you represent, received a request for four categories of information pertaining to a named student and eighteen categories of information pertaining to policies and procedures of the district. You state some of the submitted information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.108 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have only submitted two pages of information. To the extent any additional information responsive to this request existed and was maintained by the district

---

<sup>1</sup>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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.texasattorneygeneral.gov/open/20060725usdoe.pdf>.

on the date the district received the request, we assume the district has released it. If the district has not released any such information, it must do so at this time. Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.108 of the Government Code excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” Gov't Code § 552.108(a)(1). A governmental body must reasonably explain how and why section 552.108(a)(1) is applicable to the information at issue. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Section 552.108 applies to information held by a “law enforcement agency.” However, section 552.108 may be invoked by the proper custodian of information relating to a pending investigation or prosecution of criminal conduct. *See* Open Records Decision No. 474 at 4-5 (1987). Where a non-law enforcement agency has custody of information that would otherwise qualify for exception under section 552.108 as information relating to the pending case of a law enforcement agency, the custodian of the records may withhold the information if it provides this office with a demonstration the information relates to the pending case and a representation from the law enforcement agency that it wishes to have the information withheld. You state the submitted information pertains to an investigation with the Wilson County District Attorney’s Office (the “district attorney’s office”). However, in this instance, you have not provided our office with any representation to indicate the district attorney’s office wishes to have the information at issue withheld. Accordingly, the district has failed to demonstrate section 552.108(a)(1) of the Government Code is applicable to the information at issue, and the district may not withhold any portion of the submitted information under section 552.108(a)(1).

Section 552.135 of the Government Code provides the following:

- (a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

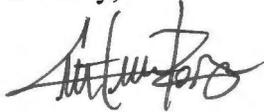
Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of “law,” a school district that seeks to withhold information under the exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* § 552.301(e)(1)(A). Additionally, individuals who provide information in the course

of the investigation, but do not report a violation of law are not informants for purposes of section 552.135 of the Government Code. Upon review, we find the district has not demonstrated the submitted information identifies an informer for the purposes of section 552.135. Therefore, we find the district may not withhold any of the submitted information under section 552.135 of the Government Code. As you raise no other exceptions to disclosure of the submitted information, it must be released.

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,



Cristian Rosas-Grillet  
Assistant Attorney General  
Open Records Division

CRG/akg

Ref: ID# 595038

Enc. Submitted documents

c: Requestor  
(w/o enclosures)