



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 3, 2016

Ms. Nancy Law
Public Information Officer
Office of the President
Kilgore College
1100 Broadway
Kilgore, Texas 75662-3204

OR2016-02579

Dear Ms. Law:

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# 596876 (KC ID No. 2016-20-KC).

Kilgore College (the "college") received a request for any complaints and investigative materials pertaining to complaints against a named individual.¹ We understand you have redacted information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).² Although you take no position as to whether the submitted information is excepted under the Act, you state release of the submitted

¹As you have not submitted a copy of the original request for information, we take our description from your brief.

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 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

information may implicate the interests of third parties.³ Accordingly, you state, and provide documentation demonstrating, you notified these third parties of their rights to submit arguments to this office as to why the requested information should not be released.⁴ *See* Gov't Code § 552.304 (interested party may submit written comments stating why information should or should not be released). We have reviewed the submitted information.

Some of the submitted information may be subject to section 552.117 of the Government Code.⁵ Section 552.117(a)(1) excepts from disclosure the home address and telephone number, emergency contact information, social security number, and family member information of a current or former employee or official of a governmental body who requests this information be kept confidential under section 552.024 of the Government Code. *See* Gov't Code § 552.117(a)(1). Section 552.117 is applicable to cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. *See* Open Records Decision No. 506 at 5-6 (1988) (statutory predecessor to section 552.117 not applicable to cellular telephone numbers provided and paid for by governmental body and intended for official use). Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, information may be withheld under section 552.117(a)(1) only on behalf of a current or former employee or official who made a request for confidentiality under section 552.024 prior to the date of the governmental body's receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee or official who did not timely request under section 552.024 the information be kept confidential. Accordingly, if the individuals whose information is at issue timely requested confidentiality pursuant to section 552.024, the college must withhold the information we have marked under section 552.117(a)(1); however, the cellular telephone numbers may only be withheld if a governmental body does not pay for the cellular telephone service. As you raise no further exceptions to disclosure, the college must release the remaining information.

³We note the college failed to comply with the procedural requirements of section 552.301 of the Government Code in requesting a decision from this office. *See* Gov't Code § 552.301(e). Nonetheless, third party interests can provide a compelling reason to overcome the presumption of openness caused by failure to comply with section 552.301. *See id.* §§ 552.007, .302. Thus, we will consider whether the submitted information is excepted from disclosure under the Act, notwithstanding the college's violation of section 552.301 in requesting this decision.

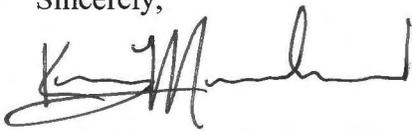
⁴As of the date of this letter, we have not received comments from any interested third party.

⁵The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

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,

A handwritten signature in black ink, appearing to read "Kenny Moreland", written over a horizontal line.

Kenny Moreland
Assistant Attorney General
Open Records Division

KJM/som

Ref: ID# 596876

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. William Wells
P.O. Box 2137
Kilgore, Texas 75663
(w/o enclosures)