



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 19, 2009

Ms. Betsy Hall Bender  
Attorney at Law  
P.O. Box 26715  
Austin, Texas 78755-0715

OR2009-06824

Dear Ms. Bender:

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# 343751 (Request No. 09-019).

The Schertz-Cibolo-Universal City Independent School District (the "district"), which you represent, received a request for the personnel file of the requestor's client, as well as any documents concerning the requestor's client that were sent to the Texas Education Agency or the State Board for Educator Certification. You state that you have released some of the information to the requestor in redacted form. You claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.102, 552.114, 552.117, 552.130, 552.135, 552.136, and 552.137 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note the United States Department of Education Family Policy Compliance Office has informed this office that 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.<sup>2</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"). Among other things, you

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<sup>1</sup> Although you raise section 552.026 of the Government Code as an exception to disclosure, we note that section 552.026 is not an exception to disclosure. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974 ("FERPA"). Gov't Code § 552.026.

<sup>2</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>.

have submitted education records that you have redacted pursuant to FERPA for our review. However, some of the submitted education records still contain redacted student information. Because our office is prohibited from reviewing these education 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 the education records.<sup>3</sup> Likewise, we do not address your argument under section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), 552.114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). However, to the extent you determine the information you have submitted is not protected by FERPA, we will consider your other arguments against disclosure.

Next, we must address the district's procedural obligations under the Act. Section 552.301 describes the procedural obligations placed on a governmental body that receives a written request for information that it wishes to withhold. Within fifteen business days of receiving the request, the governmental body must submit to this office (1) written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e)(1)(A)-(D). You received the request for information on March 3, 2009. However, you did not submit a portion of the requested information until April 9, 2009. *See id.* § 552.301(e)(1)(D). Consequently, with respect to the information submitted on April 9, 2009 we find that the district failed to comply with the requirements of section 552.301 in requesting this decision from our office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest is demonstrated when some other source of law makes the information at issue confidential or third-party interests are at stake. *See* Open Records Decision No. 150 at 2 (1977). Because sections 552.102, 552.117, 552.130, 552.136, and 552.137 of the Government Code, which you raise, can provide compelling

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<sup>3</sup> In the future, if the district does obtain parental or an adult student's consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

reasons to overcome this presumption, we will consider your arguments under these exceptions for the information submitted to this office on April 9, 2009.

We note that you have redacted portions of the submitted information, including the named individual's transcript grades, address, phone number, driver's license number, bank account number, e-mail address, and social security number. Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. The district has no authorization, however, to withhold the named individual's transcript grades, address, phone number, driver's license number, or bank account number from the public without requesting a decision from this office under the Act. Furthermore, the requestor is the attorney for the former employee to whom the redacted information pertains. As the former employee's authorized representative, the requestor has a special right of access to information encompassed by exceptions to disclosure that are intended to protect her personal privacy. *See* Gov't Code § 552.023; Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual requests information concerning herself). Therefore, the district may not withhold any of the redacted information under sections 552.102, 552.117, 552.130, 552.136, 552.137, or 552.147 of the Government Code. However, we will consider your arguments against disclosure of the submitted records, including the redacted information. In the future, the department should refrain from redacting any information from records that are submitted to this office for the purpose of requesting a decision under the Act, unless the department has specific authorization to do so. Failure to do so may result in the presumption the redacted information is public. *See* Gov't Code § 552.302.

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. Section 552.101 encompasses section 6103(a) of title 26 of the United States Code. Prior decisions of this office have held that section 6103(a) of title 26 of the United States Code renders certain tax return information confidential. *See* 26 U.S.C. § 6103; *see also* Open Records Decision No. 600 (1992) (stating that W-4 tax forms are confidential). The submitted document is the named employee's W-4 tax form and is generally considered confidential tax return information. However, section 6103(c) is an exception to the confidentiality provisions of section 6103(a). Section 6103(c) provides that, unless the Secretary of Treasury determines that disclosure would seriously impair tax administration, tax record information may be released to any person or persons as the taxpayer may designate in a consent to such disclosure. *See* 26 U.S.C. § 6103(c); *see also* *Lake v. Rubin*, 162 F.3d 113 (D.C. Cir. 1998) (26 U.S.C. § 6103 represents exclusive statutory route for taxpayer to gain access to own return information and overrides individual's right of access under 5 U.S.C. § 552a(d)(1) to federal agency records concerning self). The employee in this instance has consented to the disclosure of his information to the requestor. Therefore, pursuant to section 6103(c) of title 26 of the United States Code, the district must release the submitted W-4 form if the Secretary of Treasury determines that such disclosure would not seriously impair federal tax administration. Otherwise, the

submitted W-4 form is confidential under section 6103 of title 26 of the United States Code and must be withheld from the requestor under section 552.101 of the Government Code.

Next, you assert that portions of the remaining information are excepted under section 552.135 of the Government Code, which 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 or persons' 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].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). 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). In this instance, although you generally raise section 552.135 for the identities of witnesses who were questioned during the investigation at issue, you have not identified the individuals whose identity you seek to withhold under section 552.135. *See id.* §§ 552.301(e)(1)(A), 552.135. Further, we note that section 552.135 protects an informer's identity, but it does not generally encompass protection for witness statements. After review of your arguments and the submitted documents, we conclude you have failed to establish that any of the submitted information is excepted under section 552.135.

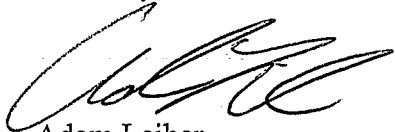
In summary, this ruling does not address the applicability of section 552.114 of the Government Code or FERPA to the submitted information. The district must release the submitted W-4 form if the Secretary of Treasury determines that such disclosure would not seriously impair federal tax administration. Otherwise, the submitted W-4 form must be

withheld under section 552.101 in conjunction with section 6103 of title 26 of the United States Code. The remaining information must be released to the requestor.<sup>4</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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Adam Leiber  
Assistant Attorney General  
Open Records Division

ACL/jb

Ref: ID# 343751

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>We note that the information being released contains confidential information to which the requestor has a right of access. See Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself). However, if the city receives another request for this particular information from a different requestor, then the city should again seek a decision from this office.