



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 13, 2016

Mr. Justin Graham
General Counsel
Office of General Counsel
Garland Independent School District
P.O. Box 469026
Garland, Texas 75046-4923

OR2016-27500

Dear Mr. Graham:

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# 637570.

The Garland Independent School District (the "district") received a request for (1) all e-mails sent and received by district board members with regard to a specified bond approval, (2) certain e-mails and letters referenced by a named individual during a specified board meeting, and (3) the handwritten notes taken by a named individual during the same specified board meeting. The district states it will release some of the requested information with redactions made pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code upon the requestor's response to a cost estimate.¹ You claim the remaining requested information is excepted

¹The 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 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: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

from disclosure under sections 552.101 and 552.111 of the Government Code.² We have considered the exceptions you claim.

Initially, we note some of the remaining requested information may have been the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2016-27294 (2016). In that ruling, we determined the district (1) may withhold the information it indicated under section 552.107(1) of the Government Code; (2) may withhold the information we marked under section 552.111 of the Government Code; (3) must withhold the information we marked under section 552.117(a)(1) of the Government Code if the individual whose information is at issue timely requested confidentiality under section 552.024 of the Government Code; and (4) 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, to the extent the remaining requested information is identical to the information previously requested and ruled upon by this office, we conclude the district must rely on Open Records Letter No. 2016-27294 as a previous determination and withhold or release the identical information in accordance with that ruling. *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). To the extent the remaining requested information was not previously ruled on, we will address your submitted arguments.

Next, we must address the district's procedural obligations under the Act. Section 552.301 of the Government Code prescribes the procedures a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Pursuant to section 552.301(e), a governmental body that receives a request for information it wishes to withhold under an exception to disclosure must submit to this office within fifteen business days of receiving the request (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). The district received the instant request for information on September 20, 2016. However, as of the date of this letter, you have not submitted arguments explaining why the stated exceptions apply or a copy or representative sample of the remaining requested information. Consequently, we find the

²We note, although you also raise section 552.022 of the Government Code, 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.

district failed to comply with the requirements of section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See id.* § 552.302; *Simmons v. Kuzmich*, 166 S. W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see also* Open Records Decision No. 630 (1994). Generally, a compelling reason to withhold information exists where some other source of law makes the information confidential or where third-party interests are at stake. Open Records Decision No. 150 at 2 (1977). The district claims section 552.111 of the Government Code for the requested information. However, section 552.111 is discretionary in nature and does not make information confidential under the Act. *See* Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 663 at 5 (1999) (waiver of discretionary exceptions), 470 at 7 (1987) (statutory predecessor to section 552.111 subject to waiver). Accordingly, the district may not withhold any portion of the remaining requested information under section 552.111 of the Government Code. Although section 552.101 of the Government Code can make information confidential, and thus can provide a compelling reason for nondisclosure of information under section 552.302, we have no basis for concluding that the remaining requested information is excepted under this section because the district failed to submit any portion of it to us for our review. Thus, we have no choice but to order the remaining requested information released pursuant to section 552.302 of the Government Code.

In summary, to the extent the remaining requested information is identical to the information previously requested and ruled upon by this office in Open Records Letter No. 2016-27294, the district must rely on that ruling as a previous determination and withhold or release the identical information in accordance with that ruling. To the extent the remaining requested information was not previously ruled on, the district must release it pursuant to section 552.302 of the Government Code. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court pursuant to section 552.324 of the Government Code.

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 that reads "Britni Ramirez". The signature is written in a cursive style with a large, looping 'R' at the end.

Britni Ramirez
Assistant Attorney General
Open Records Division

BR/bhf

Ref: ID# 637570

Enc. Submitted documents

c: Requestor