



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 5, 2020

Ms. Patricia A. Rigney
City Attorney
City of Pharr
P.O. Box 1729
Pharr, Texas 78577

OR2020-25010

Dear Ms. Rigney:

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# 846449 (PIR# R001626-072220).

The City of Pharr (the "city") received a request for any information regarding city funds granted to a specified entity during a stated time period. You state the city will release some information to the requestor. You claim the submitted information is exempted from disclosure under section 552.114 of the Government Code.¹ We have considered the claimed exception and reviewed the submitted information.

You assert the submitted information is exempted from disclosure under the Family Education Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. 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 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.² Consequently,

¹ Although you also raise section 552.026 of the Government Code, this section is not an exception to disclosure. Rather, section 552.026 provides 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. *See* Gov't Code § 552.026.

² A copy of this letter may be found on the Office of the Attorney General's website: <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

education records that are responsive to a request for information under the Act should not be submitted 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 unredacted education records for our review. We note the city is not an educational institution. *See* Open Records Decision No. 309 at 3 (1983) (City of Fort Worth not an “educational agency” within the meaning of FERPA). However, FERPA contains provisions that govern access to education records that an educational agency or institution transfers to a third party. We are unable to determine whether the city obtained any of the information at issue directly from an educational institution. To the extent any of the submitted information was obtained from an educational institution, so as to be governed by FERPA, we will not address the applicability of FERPA to the information at issue, because our office is prohibited from reviewing education records to determine whether appropriate redactions have been made under FERPA. Such determinations under FERPA must be made by the educational authorities from which education records were obtained. Likewise, we do not address your argument under section 552.114 of the Government Code for the information at issue. *See* Gov’t Code § 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). Thus, the city should contact any educational institutions from which the information at issue was obtained, as well as the DOE, regarding the applicability of FERPA to the information at issue. To the extent that the information at issue is not governed by FERPA, the city must release the submitted 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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

James M. Graham
Assistant Attorney General
Open Records Division

JMG/eb

Ref: ID# 846449

c: Requestor