



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

October 13, 2022

Ms. Ingrid Gunter  
Paralegal

Ms. D'Ann Lacey Bey  
General Counsel  
Lewisville Independent School District  
1565 West Main Street  
Lewisville, Texas 75067

OR2022-31559

Dear Ms. Gunter and Ms. Bey:

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# 975385.

The Lewisville Independent School District (the "district") received a request for information pertaining to specified types of violations during a stated period of time. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, does not permit a state educational agency or institution 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>1</sup> Consequently, state and local education 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

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<sup>1</sup> A copy of this letter may be found on the attorney general's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>

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”); *see also* Open Records Decision No. 224 (1979) (student’s handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). In this instance, you have submitted information which may constitute education records for our review. Because our office is prohibited from reviewing education records to determine the applicability of FERPA, we will not address FERPA with respect to any of the submitted records, except to note FERPA is not applicable to law enforcement records maintained by the district’s police department (the “department”) that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, 99.8. Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your argument against disclosure of the submitted information.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information made confidential by other statutes, such as section 418.177 of the Government Code, which was added to chapter 418 of the Government Code as part of the Texas Homeland Security Act (the “HSA”). Section 418.177 provides that information is confidential if it:

- (1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and
- (2) relates to an assessment by or for a governmental entity, or an assessment that is maintained by a governmental entity, of the risk or vulnerability of persons or property, including critical infrastructure, to an act of terrorism or related criminal activity.

*Id.* § 418.177. The fact that information may relate to a governmental body’s security measures does not make the information *per se* confidential under the HSA. *See* Open Records Decision No. 649 (1996). Furthermore, the mere recitation by a governmental body of a statute’s key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any exception to disclosure, a governmental body asserting one of the confidentiality provisions of the HSA must adequately explain how the responsive records fall within the scope of the claimed provision. *See* Gov’t Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

You explain the submitted information pertains to incidents of possession of firearms on district school campuses and assert this information is confidential under section 418.177 of the Government Code. You assert release of the information at issue “could expose weaknesses and vulnerabilities in the district’s crisis management experiences that could be exploited by a criminal or terrorist.” Based upon your representations and our review, we find the information at issue was collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of

terrorism or related criminal activity and relates to an assessment of the risk or vulnerability of persons or property to an act of terrorism or related criminal activity. *See id.* § 418.177. Accordingly, the district must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 418.177 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 <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,

Blake Brennan  
Assistant Attorney General  
Open Records Division

BBX/mo

Ref: ID# 975385

Enc. Submitted documents

c: Requestor  
(w/o enclosures)