



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 5, 1993

Ms. Michelle Willhelm
Superintendent
Alief Independent School District
P.O. Box 68
Alief, Texas 77411

OR93-418

Dear Ms. Willhelm:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 20179.

The Alief Independent School District (the "school district") has received a request for information relating to an incident on a school bus, during which a school district student was injured. Specifically, the requestor, who represents the mother of the injured student, seeks "any and all information relevant to the incident." In addition, the requestor seeks:

1. A police report or any report of the incident.
2. Name of the School Bus Driver who was driving the bus at the time of the Incident.
3. A copy of Handbook of rules governing the conduct of School Bus drivers, specifically the section that regulate the duties of the Bus driver during a School Bus fight.
4. Pictures taken, if any.
5. The names and addresses of the Campus Officers who participated in any investigation of such incident.

You have submitted the requested information to us for review. You claim that it is excepted from required public disclosure by sections 3(a)(1) and 3(a)(14) of the Open Records Act.

You claim that the requested information is excepted from required public disclosure by section 3(a)(1) in conjunction with the federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein . . .) of students without the written consent of their parents to any individual, agency, or organization

20 U.S.C. § 1232g(b)(1). "Education records" are records which:

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987) (holding that information generated by a consultant to the University of Houston relating to an investigation of student athletes constituted "education records" within the meaning of FERPA); 447 (1986).¹ Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982); 206 (1978).

We note, however, that with the exception of the school district's "Alief Transportation Department Employee Handbook," the documents submitted to us for review were maintained and created by the school district police department. Effective July 23, 1992, FERPA was amended to expressly state: "The term 'education records' does not include-- . . . (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." 20 U.S.C. §1232g(a)(4)(B)(ii); *see also* Higher Education

¹In conjunction with your claim that FERPA excepts the requested information from required public disclosure, your refer us to section 3(a)(14) of the Open Records Act. Section 3(a)(14) excepts from required public disclosure "student records at educational institutions funded wholly, or in part, by state revenue . . ." V.T.C.S. art. 6252-17a, § 3(a)(14). The phrase "student records" in section 3(a)(14) has generally been construed to be the equivalent of "education records." Thus, our resolution of FERPA in this instance also resolves the application of section 3(a)(14) to the requested information. *See generally* Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982); *see also* V.T.C.S. art. 6252-17a, § 14(e) (incorporating the requirements of FERPA into the Open Records Act and making them prevail over other inconsistent provisions of the Open Records Act); Open Records Decision No. 431 (1985).

Amendments of 1992, Pub. L. No. 102-325, tit. XV, pt. H, § 1555(a), 106 Stat. 448 (July 23, 1992).

On the basis of this amendment, we conclude that the requested information, except for the "Alief Transportation Department Employee Handbook," are not education records for the purposes of FERPA. Accordingly, such records are not governed by FERPA and thus may not be withheld from required public disclosure under sections 3(a)(14), and 14(e) of the Open Records Act. Having examined the "Alief Transportation Department Employee Handbook," we conclude that it contains no information identifying or tending to identify students. Accordingly, this document too may not be withheld under sections 3(a)(14) and 14(e) of the Open Records Act and must be released in its entirety.

We note, however, that the requested information relates to the arrest of a juvenile. Accordingly, the information may be confidential under section 51.14 of the Family Code, which provides in part:

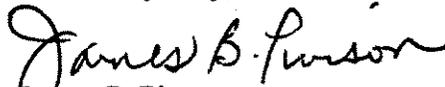
(d) Except for files and records relating to a charge for which a child is transferred under section 54.02 of this code to a criminal court for prosecution, the law-enforcement files and records [concerning a child] are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

See also Open Records Decision Nos. 394 (1983) (section 51.14 of Family Code requires withholding of information in police department's law enforcement records that might identify juvenile); 181 (1977) (police reports identifying or tending to identify juveniles are governed by section 51.14). Accordingly, unless the requestor falls within any of the three exceptions to section 51.14(d), the information submitted to us for review that was maintained and created by the school district police department must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. However, if the requestor falls within any of the three exceptions, the requested information must be released in its entirety.

Because prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



James B. Pinson
Assistant Attorney General
Opinion Committee

JBP/GCK/jmn

Ref.: ID# 20179

cc: Mr. Clive Rivers
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