



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 28, 1994

Mr. Jeffrey J. Horner
Law Offices of Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR94-091

Dear Mr. Horner:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 23420.

The Galena Park Independent School District ("the district") received an open records request from an individual for files relating to her employment with the district. We have reviewed the documents at issue and will address each of your arguments.

You have provided seven different exhibits. You contend that Exhibits #1 through #6 are protected student education records under sections 552.026 and 552.114. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 excepts from disclosure educational records unless released in compliance with the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g. FERPA provides that federal funding shall not be made available to "any educational agency or institution which has a policy or practice of permitting the release of educational records" of students without the written consent of the parents of minor students. 20 U.S.C. § 1232g(b)(1). A review of the exhibits indicates that certain documents fit the definition of education records, since they are held by the district and contain information directly relating to students. *Id.* § 1232g(a)(4)(A); Attorney General Opinion H-447 (1974).

¹We note that the Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73rd Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. This codification is a nonsubstantive revision. *Id.* § 47.

However, sections 552.026 and 552.114 protect from disclosure only information that would identify individual students. Open Records Decision Nos. 332 (1982) at 3; 294 (1981) at 2. Only Exhibits #1 through #4 have identifying information that may be withheld. We have marked these exhibits to indicate what information must be withheld. The remainder of the information in Exhibits #1 through #6 is not exempt from disclosure under sections 552.026 and 552.114.

You contend that Exhibits #5 through #7 are exempt under section 552.111 as intra-agency or interagency memoranda not available by law to a party in litigation with the agency. This office had previously held that section 552.111 was applicable to advice, opinion, and recommendations used in the decision-making process within an agency or between agencies. Open Records Decision Nos. 574 (1990) at 1-2; 565 (1990) at 9. However, in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), the court addressed the proper scope and interpretation of this exception. In light of that decision (a copy of which we have enclosed), this office re-examined its past rulings. In Open Records Decision No. 615 (1993) at 5, we determined that to come within this exception "information must be related to the policymaking functions of the governmental body," rather than routine personnel and administrative matters. A review of Exhibits #5 through #7 indicates that these documents do not relate to the policymaking functions of the governmental body. This information may not be withheld under section 552.111.

You also state that Exhibit #7 "contains investigatory information compiled by a law enforcement agency which may be confidential by law, either constitutional or by judicial decision." We assume you are asserting that the information is confidential under section 552.108.² Section 552.108 provides an exception for law enforcement and prosecutorial records for cases under active investigation. This section may be invoked by a proper custodian of information related to an ongoing investigation or prosecution of an incident involving criminal conduct, even if it is not a law enforcement agency, if the investigation may lead to the filing of criminal charges.³ Open Records Decision No. 474 (1987) at 4-5. This document would be protected if release of the information would

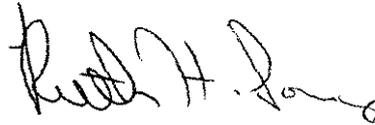
²Section 552.108 specifically provides an exception for law enforcement and investigatory records. We note that section 552.101 contains an exception for information that is "considered to be confidential by law, either constitutional, statutory, or by judicial decision." Although common-law and constitutional privacy interests are protected by section 552.101, the district may not refuse to disclose this document to the requestor on the basis of protecting her own privacy interests under section 552.101 because the information in the document is about the requestor herself. Open Records Decision No. 481 (1987) at 4 (privacy is not implicated when an individual asks for information about himself). Section 552.101 does not appear to be otherwise implicated by the release of this information.

³We assume that the document relates to the district's internal investigation of the individual's performance and conduct. The document does not appear to be related to a law enforcement agency's investigation of criminal conduct, nor have you provided information that would indicate such.

undermine the district's legitimate interests relating to law enforcement or the investigation or prosecution of crime. Open Records Decision No. 434 (1986) at 2. However, it is not clear to this office, and you have not explained, how Exhibit #7 relates to criminal behavior or the investigation of criminal activity. Therefore, this information may not be withheld under section 552.108.

Because case law and 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,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref: ID# 23420
ID# 24248

Enclosures: Marked documents
Open Records Decision No. 615

cc: Ms. Sheila McDonald
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(w/o enclosures)