



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 31, 1994

Mr. Richard Abernathy  
Abernathy, Roeder, Robertson & Joplin  
P. O. Box 1210  
McKinney, Texas 75069-1210

OR94-143

Dear Mr. Abernathy:

On behalf of the Plano Independent School District ("the school district"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code, formerly V.T.C.S. article 6252-17a.<sup>1</sup> Your request was assigned ID# 20670.

The principal of Clark High School received a request from a parent of a student at that school for the following information:

1. A copy of the written 1992-1993 Clark High School Math Department policy, as described by you, Sally Blum, Chairperson of the Math Department, and Ms. Hamilton, [ ] Geometry teacher for the 1992-93 school term, which states that no written examination papers or answer sheets or final exams will be returned to Clark High Students by the Math Teacher, as a matter of class practice and Math department policy or upon request of either a student or the student's parent(s).
2. Return of all second semester (1993) examination papers and answer sheets and the final examination for the second semester.

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<sup>1</sup>V.T.C.S. article 6252-17a was repealed by the Seventy-third Legislature. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the the Government Code at chapter 552. *Id.* § 1. This codification of the Open Records Act is a nonsubstantive revision. *Id.* § 47.

You did not send information that is responsive to request item 1 or raise exceptions to the disclosure of such information. Thus, we assume that either it does not exist, or you have released this information to the requestor.

As for the information sought in request item 2, you assert that such information is excepted from required public disclosure under sections 3(a)(1), 3(a)(11), and 3(a)(22) of V.T.C.S. article 6252-17a, now sections 552.101,<sup>2</sup> 552.111, and 552.122 of the Government Code. With respect to the requestor's child's examination paper and answer sheet, we need not determine whether these exceptions apply, since both the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. §1232g, and section 552.114(b) of the Open Records Act grant the requestor access to her child's education records.

FERPA provides in relevant part the following:

(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. . . .

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials 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.

20 U.S.C. §1232g(a). Education records include a student's examination papers. *See* Open Records Decision No. 120 (1976). Thus, if the district wishes to continue to receive federal funds pursuant to FERPA, it must allow the parent here access to her child's examination papers. *See* Attorney General Opinion JM-154 (1984).

A parent's right to inspect a student's educational records under FERPA exists notwithstanding the fact that an exception to required disclosure in the Open Records Act may apply. Section 552.026 of the Open Records Act states that the Open Records Act

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<sup>2</sup>Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." However, you cite no law which would make the requested information confidential.

does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA].

This provision incorporates the requirements of FERPA into the Open Records Act and makes them prevail over other inconsistent provisions of the Open Records Act. *See* Open Records Decision No. 431 (1985) at 3.

Section 552.114(b) provides in part as follows:

A [student record at an educational institution funded wholly or partly by state revenue] shall be made available on the request of:

....

(2) The student involved or the student's parent, legal guardian, or spouse.

A parent's right of access to his child's educational records under this provision prevails over exceptions to required public disclosure in the Open Records Act. *See* Open Records Decision No. 120 (1976). Thus, section 552.114 of the Open Records Act requires the district to release all of the requestor's child's second semester examination papers.

However, the teacher's answer sheet key is not the educational record of the requestor's child. "Education records" for purposes of FERPA and section 552.114 are records that contain information *directly* related to a student. 20 U.S.C. § 1232g(a)(4)(A)(i). Therefore, neither FERPA nor section 552.114 of the Open Records Act requires the district to release the answer sheet key to the requestor. Nor does either FERPA or section 552.114 except the answer sheet key from required public disclosure.

Section 552.122(a) of the Government Code excepts from required public disclosure "a test item developed by an educational institution that is funded wholly or in part by state revenue." This provision provides express protection for copies of answer keys developed by an educational institution that is funded wholly or in part by state revenue. *See* Open Records Decision No. 537 (1990) at 2. Accordingly, the school district may withhold the answer sheet key pursuant to section 552.122(a) of the Government Code.

We also note that to the extent that the requested information can be interpreted as meaning the examination papers and answer sheets of other students, we conclude that the educational records of other students are excepted from required public disclosure pursuant to FERPA.

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,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kay Guajardo  
Assistant Attorney General  
Open Government Section

KHG/TCC/rho

Ref.: ID# 20670

Enclosures: Submitted documents

cc: Ms. Ellen Loomstein  
904 Goodwin Drive  
Plano, Texas 75023  
(w/o enclosures)