



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 23, 1994

Mr. W. R. Savage
111 Main Street
Marble Falls, Texas 78654

OR94-476

Dear Mr. Savage:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 25181.

The Marble Falls Independent School District (the "district"), which you represent, received an open records request from a parent of one of the district's student for all records pertaining to the student, including those records pertaining to the district's investigation into allegations that the requestor's child was a victim of a sexual assault. You state that you have released to the requestor some of the requested records; you contend that the district may withhold other records that come under the protection of sections 552.026 and 552.108 of the Government Code.

Section 552.108, known as the "law enforcement" exception, excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime

Where an incident involving allegedly criminal conduct is the subject of an active criminal investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to the incident. Open Records Decision Nos. 474 (1987); 372 (1983). In this regard, you explain that the district conducted its investigation "in conjunction with law enforcement officials." Assuming that the district has shared with law enforcement officials the information it gathered during the investigation, we now discuss the general applicability of section 552.108.

When a governmental body claims section 552.108, the relevant question this office must address is whether the release of the requested information would undermine

a legitimate interest relating to law enforcement or prosecution. Open Records Decision No. 434 (1986). Whether disclosure of particular records will unduly interfere with law enforcement interests must be decided on a case-by-case basis. Attorney General Opinion MW-381 (1981). In this instance, one of the records you submitted to this office indicates that the criminal investigation into this matter has been discontinued. Because it appears unlikely that there will be a criminal prosecution in this case, this office does not believe that the release of this information would unduly interfere with law enforcement efforts at this time. Consequently, section 552.108 is inapplicable here.

We next address your concerns regarding section 552.026 of the Government Code. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. See 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). However, 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) (copies enclosed). See also *Kneeland v. National Collegiate Athletic Ass'n*, 850 F.2d 224 (5th Cir. 1988), *cert denied* 488 U.S. 1042 (1989) (educational records are public where personally identifiable information is deleted).

For purposes of FERPA, the records you have submitted to this office clearly constitute "education records" to the extent that they contain information about identifiable students. Further, even if the names of the students were deleted, most of the remaining information contained in these records either tends to identify the students who participated in the investigation or makes their identities "easily traceable." See 34 C.F.R. § 99.3; see also Open Records Decision No. 224 (1979). Consequently, the district must withhold all portions of these records that tend to identify particular students unless you receive permission to release the information from the parent of the student. We have marked those portions of the records coming under the protection of section 552.026; the few remaining portions of these records pertaining solely to the alleged victim must be released to the child's parent.

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

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/RWP/rho

Ref.: ID# 25181

Enclosures: Open Records Decision Nos. 332, 206
Marked documents