



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 14, 1994

Ms. Myra C. Schexnayder
Assistant School Attorney
Houston Independent School District
Hattie Mae White Administration Building
3830 Richmond Avenue
Houston, Texas 77027-5838

OR94-546

Dear Ms. Schexnayder:

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# 26955.

The Houston Independent School District ("the district") received a request for information regarding an investigation of allegations of the use of excessive force by a certain district teacher against a middle school student. The request is from the attorney who is representing the teacher who is accused of using excessive force. You say the district will release much of the requested information. However, based on section 552.114 of the Government Code, the district seeks to withhold a tape recording of student interviews conducted during the investigation, as well as photographs of the student who sustained injuries allegedly as a result of the teacher's use of excessive force.

Section 552.114 of the Government Code provides as follows:

(a) Information is excepted from the requirements of Section 552.021 if it is information in a student record at an educational institution funded wholly or partly by state revenue.

(b) A record under Subsection (a) shall be made available on the request of:

(1) educational institution personnel;

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

(3) a person conducting a child abuse investigation required by Section 34.05, Family Code.

The term "student record" in this provision generally includes information concerning the student himself and his individual relationship to the educational institution, including information about disciplinary actions. *See* Open Records Decision No. 612 (1992) at 2 (quoting Attorney General Opinion H-447 (1974)). The photographs and tape recordings concern a teacher's discipline of a student. We, therefore, find that the tape recording and photographs are student records under section 552.114. *See* Open Records Decision No. 539 (1990).

Our attention is directed to subsection (b)(1) of section 552.114 of the Government Code, which requires an educational institution to release student records on the request of educational institution personnel. *See* Attorney General Opinion H-447 (1974) at 2. However, we do not think section 552.114(b)(1) controls the release of the requested student records in this case.

Section 552.026 of the Government Code reads 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 ["FERPA"].

Section 552.026 incorporates the requirements of FERPA into the Open Records Act and makes them prevail over inconsistent provisions of the Open Records Act. Open Records Decision No. 431 (1985) at 3. Thus, the Open Records Act requires that the district release the student records in accordance with FERPA. *Id.* The right of "educational personnel" to the records under section 552.114(b)(1) may not be granted if the release of the records to educational personnel would be contrary to FERPA.

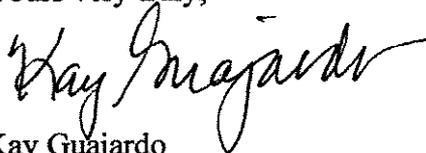
Generally, FERPA prohibits the release of educational records without a parent's written consent in order for an educational agency or institution to receive federal funds under programs administered by the federal government. *See* 20 U.S.C. § 1232g(b). For purposes of FERPA, "educational records" mean materials which contain information directly related to a student and maintained by an educational agency or institution. *See id.* § 1232g(a)(4)(A). The requested photographs and tape recording are education

records for purposes of FERPA. We have not been informed that the parents of the students involved have consented to the release of the requested information.

We find that the release of the requested information pursuant to section 552.114(b)(1) would be contrary to FERPA. Prior decisions of this office have determined that pursuant to FERPA a school district must not release "education records" to a teacher or a representative of a teacher. *See* Open Records Decision Nos. 332, 327 (1982).¹ Accordingly, we conclude that the school district must withhold the information pursuant to section 552.026 of the Government Code.

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,



Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/MRC/rho

Ref.: ID# 26955

Enclosures: Submitted photographs and tape

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¹ We note that FERPA contains a provision that permits the release of education records "to school officials, including teachers with the educational institution or local education agency, who have been determined by the agency or institution to have legitimate educational interests." *See* 20 U.S.C. § 1232g(b)(1)(A); *see also* 34 C.F.R. § 99.31 (prior consent not required when disclosure is to other school official whom the educational institution has determined to have a legitimate education interest). As this provision requires the agency or institution to determine whether a school official has a legitimate educational interest in obtaining educational records, we need not address whether the requestor here has a "legitimate educational interest" which would entitle him to the requested information pursuant to section 1232g(b)(1)(A) of title 20 of the United States Code.

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(w/o enclosures)