



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 20, 1995

Ms. Jennifer W. Jacobs
Bracewell & Patterson
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR95-134

Dear Ms. Jacobs:

As counsel for the Houston 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. Your request was assigned ID# 29973.

The school district received a request for copies of all attorney fee bills pertaining to a certain student's due process hearing and for any other attorney fee bills pertaining to that student. The request is from the father of the student involved in the hearing. You inform us that the school district has released the requested fee bills, but with the redaction of the portion of the bills that describe some of the services rendered. The school district asserts that it may withhold the information about the services rendered pursuant to sections 552.101, 552.103, and 552.107(1).

The Open Records Act expressly incorporates the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA"). Gov't Code § 552.026. FERPA gives parents the right to inspect the education records of their children. 20 U.S.C. § 1232g(a)(1)(A). Under FERPA, "education records" are 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.

Id. § 1232g(a)(4)(A). We believe that the descriptions of the services rendered in the attorney fee bills are "education records" for purposes of FERPA. *See* Open Records Decision No. 462 (1987) at 15. Therefore, FERPA requires the school district to give the requestor here, as the parent of the student to whom the records relate, the right to inspect the descriptions, unless one of the exceptions you raise applies.

You contend that section 552.103 excepts the descriptions from required public disclosure. This exception to disclosure may not be applied to deny a parent the right to inspect his child's education records under FERPA. *See* Open Records Decision No. 431 (1985) at 3. Therefore, we need not consider your section 552.103 claim, since the requestor here is the student's parent.

You also raise section 552.107(1) of the Government Code. The Family Policy Compliance Office of the United States Department of Education informed this office that a parent's right to information about his child under FERPA does not prevail over a school district's right to assert the attorney-client privilege.¹

Section 552.107(1) incorporates the attorney-client privilege found in the Texas and federal rules of evidence. *See* Open Records Decision Nos. 630 (1994); 575 (1990). This exception protects only the essence of the confidential relationship between the attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 (1990) at 5. Consequently, a governmental body may not withhold fee bills in their entirety under this exception, but may only withhold information about the details of the substance of communications between the attorney and the client.

That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. *See* Open Records Decision No. 574 (1990). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. *See* Open Records Decision No. 589 (1991). We have marked the portions of the fee bills that the school district may withhold based on section 552.107(1) of the Government Code. The remaining information on the fee bills must be released.²

¹We have enclosed a copy of our correspondence from the Family Policy Compliance Office.

²You also raise section 552.101 of the Government Code, which excepts from required public disclosure information that is confidential by law. You raise this exception in conjunction with the attorney-client privilege. As we have already considered the application of the attorney-client privilege under section 552.107(1), we need not address the application of section 552.101 to the requested information.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Kay Guajardo". The signature is written in a cursive style with a large initial "K" and "G".

Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/rho

Ref.: ID# 29973

Enclosures: Marked documents