



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 29, 1995

Robert L. Carruthers, Jr., Ph.D.
Superintendent
Reagan County Independent School District
111 12th Street
Big Lake, Texas 76932-3599

OR95-159

Dear Dr. Carruthers:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 30619.

The Reagan County Independent School District (the "school district") has received three requests for information relating to a dispute involving a school teacher. In her first request, the requestor seeks "a copy of all walk-through and/or evaluations the superintendent has conducted this year of any teacher in the Reagan County Independent School District." In addition, the requestor seeks the personnel file of her client, Ms. Nida Chambers, and any parent complaints made against Ms. Chambers since August 1, 1993. Finally, the requestor seeks "[a]ny documentation you have created to substantiate the November 4, 1994, growth plan for Nida Chambers" and "[a] copy of any growth plan you have issued to any other teacher at Reagan Elementary for the 1994-95 school year." You have submitted the requested information to us for review and claim that sections 552.026, 552.101, 552.111, and 552.114 of the Government Code except it from required public disclosure.

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." Section 552.114 excepts "information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.026 incorporates the requirements of the federal Family Educational Rights and Privacy

Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, into the Open Records Act.¹ Open Records Decision No. 431 (1985). You claim that these provisions require the school district to withhold the names of parents who made complaints against Ms. Chambers. We agree.

FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein . . .) of students without the written consent of their parents to any individual, agency, or organization

20 U.S.C. § 1232g(b)(1). "Education records" are records that

- (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); *see also* Open Records Decision Nos. 462 (1987) at 14-15; 447 (1986).² 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). FERPA applies to students formerly enrolled at an educational agency or institution. *See* Open Records Decision Nos. 539 (1990); 469 (1987).

We believe that the names of students' parents, if released, would reveal the identity of students or would make the students' identities "easily traceable." *See* 34 C.F.R. § 99.3 (providing that nondisclosure may be required if disclosure would make

¹Questions about FERPA can be directed to:

Family Policy Compliance Office
Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-4605
(202) 260-3887

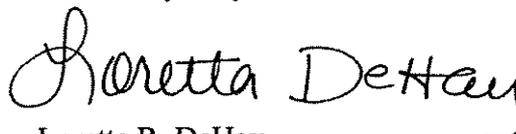
²The phrase "student record" in section 552.114 has generally been construed to be the equivalent of "education records." Thus, our resolution of the availability of this information under FERPA in this instance also resolves the applicability of section 552.114 to the requested information. *See generally* Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982).

student's identity "easily traceable"). Accordingly, we conclude that the school district must not release any information that tends to identify a student absent the consent of the parents.³

You claim that section 552.111 excepts the requested walk-through evaluations and growth plan information. We disagree. Section 552.111 excepts an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the section 552.111 exception and held that it excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. In addition, this office concluded that an agency's policymaking functions do not encompass routine internal administrative or personnel matters, because disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. The requested walk-through evaluations and growth plan information relate to routine internal administrative and personnel matter, that is, the evaluation of school district employees. Accordingly, we conclude that section 552.111 does not except this information from required public disclosure. The school district must therefore release the requested information, except as noted above.

We are resolving this matter with an 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 should 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,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

³We note that the school district has produced a document in response to the request that contains the substance of the parents' complaints, but has de-identified the complainants. In Open Records Decision No. 606 (1992), this office held that the Open Records Act requires a governmental body to release a copy of an actual requested record, with any confidential or nondisclosable information excised. The Open Records Act does not permit a governmental body to provide a requestor with a new document on which only the disclosable requested information has been consolidated and retyped. Open Records Decision No. 606 (1992) at 3. Accordingly, the school district must release the parents' complaints with the names of the parents and any other information that might identify a student, that is, a student's name, social security number, address, and telephone number, redacted, unless the requestor agrees to accept the substitute de-identified document that you have created.

LRD/GCK/rho

Ref: ID# 30619

Enclosures: Submitted documents

cc: Ms. Katherine L. Duff
Brim, Arnett & Judge
2525 Wallingwood Drive, Building 14
Austin, Texas 78746
(w/o enclosures)