



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 24, 1995

Ms. M. Kaye DeWalt
School Attorney
Houston Independent School District
Hattie Mae White Administration Bldg.
3830 Richmond Avenue
Houston, Texas 77027-5838

OR95-666

Dear Ms. DeWalt:

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# 31887.

The Houston Independent School District (the "district") received an open records request for records pertaining to an alleged sexual assault of one of the district's female students. You have submitted to this office for review records of the district's police department concerning the assault as well as related administrative memoranda. You contend these records come under the protection of section 552.108 of the Government Code as well as common-law privacy as incorporated into section 552.101 of the Government Code.

Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 (1982) at 1, we will raise specific statutes that make information confidential because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Gov't Code § 552.352. Section 51.14(d) of the Family Code governs the release of law enforcement records pertaining to crimes committed by juveniles:

(d) Except as provided by Article 15.27, Code of Criminal Procedure, and except for files and records relating to a charge for which a child is transferred under Section 54.02 of this code to

a criminal court for prosecution, the law-enforcement files and records are not open to public inspection nor may their contents be disclosed to the public, but inspection of the files and records is permitted by:

- (1) a juvenile court having the child before it in any proceeding;
- (2) an attorney for a party to the proceeding; and
- (3) law-enforcement officers when necessary for the discharge of their official duties.

The individual seeking the records at issue does not appear to be among those eligible to receive copies of the police records at issue. We therefore conclude that in this instance the district must withhold in their entirety all of the district police records concerning the assault in accordance with section 51.14(d).¹ We similarly conclude that to the extent that the district has shared the remaining requested documents with the police department, those records must also be withheld. *Cf.* Open Records Decision Nos. 474 (1987), 372 (1983) ("law-enforcement" exception may be invoked by any proper custodian of information which relates to active criminal investigation). *But see* Open Records Decision No. 519 (1989) (governmental body may not transfer information in order to avoid compliance with Open Records Act).

In the event that the district has not already provided copies of the internal memoranda to the police, we next address whether these records are excepted from required public disclosure. Although you did not raise sections 552.026 and 552.114 of the Government Code, we note that these provisions require the district to withhold information about identifiable students. Section 552.114(a) requires that the district withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Further, section 552.026 of the Government Code 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.

¹The Seventy-fourth Legislature, in House Bill 327, has significantly amended portions of the Family Code governing access to juvenile records, including the repeal of section 51.14 and its substantial revision in chapter 58 of the Family Code, effective January 1, 1996. *See* Act of May 27, 1995, ch. 262, §§ 53, 100, 105. We do not address in this ruling the extent to which these recent amendments to the Family Code will affect requests for this type of information that are made on or after January 1, 1996.

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).

For purposes of FERPA, the memoranda at issue largely constitute "education records" in that they contain information about identifiable students. Consequently, FERPA requires that the district withhold from the public those portions of the memoranda that would identify or tend to identify those students unless the student's parent specifies otherwise. 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). We have marked those portions of the memoranda coming under the protection of sections 552.026 and 552.114;² the district must release all remaining portions of these records unless, as explained above, the district has provided copies of these records to the police department.

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

²The purpose and effect of deleting all personally identifiable information from these records is to ensure that the privacy interests of the students involved are not compromised. Accordingly, this office need not address whether the remaining information is protected by common-law privacy. *See generally Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Please note, however, that although we have marked the name of one of the student's teachers as being excepted from public disclosure, we have done so in order to protect the privacy interests of the *student*, and not the teacher, in the belief that release of the teacher's name may tend to reveal the student's identity.

LRD/RWP/rho

Ref.: ID# 31887

Enclosures: Marked documents

cc: Mr. Chris Adams
Reporter
KTRK-TV
3310 Bissonnet
Houston, Texas 77005
(w/o enclosures)