



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 29, 1995

Mr. Donald E. Lindsay
Richards Lindsay & Martin, L.L.P.
13740 Research Boulevard, Suite M-5
Austin, Texas 78750

OR95-912

Dear Mr. Lindsay:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 33447.

Your firm represents the Fort Bend Independent School District (the "district"), which has received a request for six categories of information. Specifically, the requestor seeks the following:

1. Copy of the procedure whereby [district] information is obtained from parents of students in special education for use in the monitoring process mentioned in Title 19 Texas Administrative Code [section] 89.203.
2. Copy of the procedure whereby information is obtained from parents of students in special education for use in the monitoring process mentioned in Title 19 Texas Administrative Code 89.203.
3. all copies of TEA Compliance Monitoring Reports of [the district] and follow up reports.
4. copies of records of all Attorney fees paid by [the district] for the purpose of training of staff or defending against supplying or denying services to Special Education students since 1/1/85.
5. copies of the District's employment and fee agreements with all attorneys employed to advise the District on matters pertaining to Special Education or matters concerning [a particular student].

6. copies of all attorney fee bills submitted to date to the school in connection with all matters pertaining to [a particular student].

With respect to the information requested in items 1 and 2, you contend that the district does not possess the information; rather, the Texas Commissioner of Education possesses the requested information. You aver the district advised the requestor where he may obtain the information. The Open Records Act ordinarily does not require a governmental body to obtain information from another entity, unless the entity is holding the information on behalf of the governmental body. Open Records Decision No. 534 (1989) at 2. We note that title 19 of the Texas Administrative Code, section 89.203 requires the commissioner of education to "establish a procedure whereby information is obtained from parents of students receiving special education services for use in the monitoring process." Section 89.203 further requires a school district to "provide the assistance to identify and notify parents in order to obtain the necessary information."

You state that the district will provide the requestor with a copy of the information requested in item 3. With respect to information requested in item 4, you state that the district keeps records dating more than four years old "in sealed containers in an off-site location where the records are stored in stacks reaching a height of approximately thirty feet. The district estimates that it would take three employees using a forklift approximately two weeks to locate, identify, and compile the remainder of the requested records." The district consequently has advised the requestor of the status of the old records and has required a bond for payment from the requestor before undertaking the search for responsive documents.

Sections 552.261 and 552.262 provide for the cost of accessing and copying requested information.¹ Section 552.263 provides for a bond for payment of costs.

¹The Seventy-fourth Legislature amended sections 552.261 and 552.262 of the Government Code. See Act of May 29, 1995, 74th Leg., R.S., ch. 1035, §§ 16-17, available in Westlaw, Tx-Legis 1035 (1995) (copies available from House Document Distribution Office). The amendments "apply only to a request for information that is received by a governmental body on or after September 1, 1995. A request for information that is received by a governmental body before that date is governed by the law in effect at the time the request is made." *Id.* § 26. Because the request the district received was made prior to September 1, 1995, we need not consider the amendments to sections 552.261 and 552.262.

On and after September 1, 1995, section 552.261 of the Government Code will provide as follows:

The cost of obtaining a copy of public information shall be an amount that reasonably includes all costs related to reproducing the public information, including costs of materials, labor, and overhead. If a request is for 50 or fewer pages of paper records, the charge of the public information may not include costs of materials, labor, or overhead, but shall be limited to the photocopying costs, unless the pages to be copied are located in:

- (1) more than one building; or

Section 552.261(b) authorizes a governmental body to charge for complying with a request for copies of a standard or legal size document unless the request is for fifty or fewer pages of "readily available information." The governmental body may include in the amount charged "an amount that reasonably includes all costs related to reproducing the record, including costs of materials, labor, and overhead." Gov't Code § 552.261(b).

With respect to the information responsive to items 4, 5, and 6, you have highlighted certain portions of the information and argue that the district may withhold the highlighted information from public disclosure under section 552.103 of the Government Code. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990).

You inform us the district is involved in litigation regarding particular students. The highlighted information relates to the litigation. Consequently, section 552.103 allows the district to withhold from public disclosure the highlighted information. In light of this conclusion, we need not consider at this time the other exceptions to disclosure you have raised. Of course, section 552.103 is inapplicable once the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision No. 350 (1982) at 3.

We note that certain nonhighlighted information in the documents appears to identify particular students. Section 552.026 of the Government Code governs the release of student records by an educational institution that receives federal funds under programs the federal government administers. See Open Records Decision No. 480 (1987) at 3 (quoting Open Records Decision No. 427 (1985)). Section 552.026 provides that such records must be released only in conformity with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. We assume the district receives federal funds under at least one program the federal government administers. We therefore must consider whether, under FERPA, the district may release the nonhighlighted information identifying particular students.

(Footnote continued)

(2) a remote storage facility.

Id. § 16.

As amended, section 552.262(a) of the Government Code will require the General Services Commission to adopt rules for use by "each governmental body" in determining charges under chapter 552. *Id.* A governmental body other than a state agency may determine its own charges for producing public records, but its charges may not vary more than 25% from the General Services Commission's rules. *Id.*

FERPA provides that no federal funds will be made available under an applicable program to an educational agency or institution that releases to anyone but certain enumerated federal, state, and local officials and institutions personally identifiable information (other than directory information²) contained in a student's education records unless the student's parent has authorized otherwise. See 20 U.S.C. § 1232g(b)(1). "Education records" consist of those records that contain information directly related to a student and that an educational agency or institution or a person acting for such agency or institution maintains. *Id.* § 1232g(a)(4)(A). The district must withhold some of the requested information pursuant to FERPA. We have marked a sample of the type of information the district must withhold under FERPA.

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 may not be relied upon as a previous determination under section 552.301 of the Government Code regarding any other records. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymerly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RHS/rho

Ref: ID# 33447

Enclosures: Marked documents

cc: Mr. Richard Alsenz
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Missouri City, Texas 77459
(w/o enclosures)

²For the purposes of FERPA, the term "directory information" relating to a student includes: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height if the student is a member of an athletic team, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution the student attended. 20 U.S.C. § 1232g(a)(5)(A). An educational agency or institution that makes public directory information must comply with the notice provisions in section 1232g(a)(5)(B).