



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 30, 1997

Ms. Michelle A. Eggleston
Underwood, Wilson, Berry, Stein & Johnson, P.C.
1500 Amarillo National Bank Building
P.O. Box 9158
Amarillo, Texas 79105-9158

OR97-1256

Dear Ms. Eggleston:

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# 106054.

The Clarendon Independent School District (the "district"), which you represent, received a request from a parent of a district student for written reports received by the district from each Clarendon High School Basketball player in connection with an incident involving the particular parent's son. You state the district has not released the documents pertaining to the requestor's child as some of the documents contain personally identifiable information about other students. You assert these records are excepted from disclosure pursuant to sections 552.026, and 552.114 of the Government Code. We have considered your arguments and have reviewed the redacted documents.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. In this instance, however, you have submitted to this office a request for a decision whether these documents, in which you have redacted student names, is information which must be made public under the Open Records Act.

Section 552.026 of the Government Code 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. Open Records Decision No. 431 (1985). 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

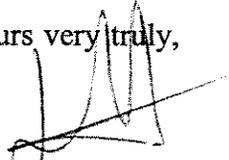
- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987) at 14-15; 447 (1986). 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). Section 552.114(a) excepts student records at an educational institution funded wholly or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

You state that "the district believes that under the Act it must give [the parent] access to the Student Statements but [it] does not believe it must provide the Student Statements in their present form," as the district must comply with the confidentiality requirements of FERPA and it must protect the privacy of each student. You assert that students' handwritten statements may reveal the identity of the students so that release to the requestor parent will violate the confidentiality guaranteed by FERPA. We agree. Therefore, we conclude the information requested is excepted from disclosure pursuant to sections 552.114 and 552.026 of the Government Code and may not be released to the requestor. Nonetheless, you state that although it is the "[d]istrict's position that it does not have to release the Student Statements in their present form," it however will release the statements if it types the statements and redacts the student names. We observe only that the Open Records Act does not require the preparation of information in a form requested by a member of the public. Open Records Decision Nos. 483 (1987), 467 (1987). Nor does the Open Records Act require a governmental body to prepare new information. Open Records Decision No. 605 (1992).

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet J. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref.: ID# 106054

Enclosures: Redacted documents

