



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 1, 1997

Mr. Joe B. Hairston
Walsh, Anderson, Underwood,
Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR97-2622

Dear Mr. Hairston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 110418.

The China Spring Independent School District (the "district"), which you represent, has received "a request for each and every written complaint or statement" made against a named employee. Additionally the requestor asks for a copy of any notes and other writings made concerning any statements made to the school district personnel. You state that some of the materials involve a student presently enrolled in one of the school district's schools and you have not submitted that information as you contend those records come under the auspices of the Family Educational Rights and Privacy Act ("FERPA"). See Family Educational Rights and Privacy Act of 1974, title 20 of the United States Code, section 1232g; Open Records Decision No. 634 (1995). You assert that the remaining documents consist of notes taken by district administrators in the process of conducting an investigation of the complaint. You seek to withhold the requested information under section 552.107 of the Government Code. You enclose the documents you seek to withhold.

Section 552.107(1) states that information is excepted from required public disclosure if

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

You contend that some of the marked information may be withheld under the attorney-client privilege. Section 552.107(1) excepts information that an attorney cannot

disclose because of a duty to his client. We observe that although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.* We have examined the marked documents you provided to this office which contain communications between the school personnel investigating the complaint and the district's attorney. Section 552.107(1) is not applicable to any of the information you have submitted, so the information may not be withheld under that exception. *See* Open Records Decision No. 462 (1987).

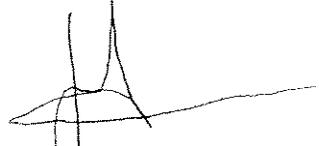
Education records must be released only in conformity with FERPA. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases identifying information in a minor student's records without parental consent or the student's consent, if an adult. *See* 20 U.S.C. § 1232g(b)(1).

We observe that "Education records" are records that contain information directly related to a student and are maintained by an educational agency or institution. *Id.* § 1232g(a)(4)(A). The records you submitted show that they concern at least one student currently enrolled in the school district. In Open Records Decision No. 539 (1990), this office relied upon a decision by the United States Department of Education Family Policy and Regulations Office in concluding that "educations records" include information about *former students* if they contain information about a former student while the individual was a student at the institution, and the records are maintained by an educational agency or institution. Open Records Decision No. 539 (1990) at 2-3¹. We note that, under FERPA, only information which would serve to identify the students or their parents is excepted from disclosure. Open Records Decision No 332 (1982) at 3. This information includes certain dates, names of places or other specific information which would serve to identify a student or his parents. Open Records Decision No. 294 (1981) at 2. Therefore, without the proper consents, you may not release the names of the students or former students mentioned in the memorandums or other identifying details. You must release the remaining information.

¹We are including a copy of Open Records Decision No. 539 (1990) for your reference.

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,

A handwritten signature in black ink, appearing to read 'Janet I. Monteros', with a long horizontal flourish extending to the right.

Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/glg

Ref: ID# 110418

Enclosures: Submitted documents
Open Records Decision No. 539 (1990)

cc: Mr. Vance Dunnam, Jr.
Dunnam & Dunnam, L.L.P.
4125 West Waco Drive
Waco, Texas 76710
(w/o enclosures)