



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 22, 1998

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR98-0210

Dear Ms. Perry:

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# 112672.

The Coppell Independent School District (the "district"), which you represent, received an open records request for certain records pertaining to an incident involving one of the district's teachers and a student. You contend these records constitute "education records" made confidential under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. § 1232g.¹

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.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable

¹Because we resolve your request under the provisions of FERPA, we need not otherwise address your claims under section 552.114 of the Government Code.

information (other than directory information) contained in a student's education records to anyone but certain numerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent.² See 20 U.S.C. § 1232g(b)(1). When a student has attained the age of eighteen years or is attending an institution of postsecondary education, the student holds the rights accorded by Congress to inspect these records. 20 U.S.C. § 1232g(d). "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. 20 U.S.C. § 1232g(a)(4)(A). There is no question that the documents you submitted to this office for review directly relate to one of the district's students so as to invoke the provisions of FERPA.

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). In this instance, however, we do not believe that the records at issue contain any severable information that is not considered confidential under FERPA. Consequently, the district must withhold these records unless the district receives permission to release the information from the parent of the student or from the student himself, if qualified to do so as specified above.

The requestor also seeks in a second request to the district copies of the teacher's performance evaluations. You contend these records are made confidential pursuant to section 21.355 of the Education Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by other statutes. Section 21.355 of the Education Code provides that "[a]ny document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* at 4. Assuming the teacher in question meets this criteria, we conclude that the release of the performance evaluations are governed by section 21.355 of the Education Code and accordingly must be withheld from the public.

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

²We assume for purposes of this ruling that the requestor is not the parent of the subject student.

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 "June B. Harden". The signature is written in a cursive style with a large initial "J" and "H".

June B. Harden
Assistant Attorney General
Open Records Division

JBH/RWP/alg

Ref.: ID# 112672

Enclosures: Submitted documents

cc: Mr. R.G. Harrell
548 W. Oak Grove
Coppell, Texas 75019
(w/o enclosures)