



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 16, 1998

Mr. Dennis J. Eichelbaum
Schwartz & Eichelbaum, P.C.
P.O. Box 802323
Dallas, Texas 75380-9045

OR98-3157

Dear Mr. Eichelbaum:

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# 120741.

The Santa Anna Independent School District (the "district"), which you represent, received a request for 7 categories of information pertaining to the investigation of a certain individual. You state that the district has released the individual's personnel file as well as the requested policies and procedures. However, you claim that the remaining information is excepted from disclosure under sections 552.103, 552.107 and 552.108.

Pursuant to section 552.301(b), a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, in your original correspondence submit to this office copies or representative samples of the specific information that was requested. Nor did you provide written comments explaining how your stated exceptions applied to the requested information.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile dated October 16, 1998, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within seven days from the date of receiving the notice. The notice further stated that under section 552.303(e) failure to comply would result in the legal presumption that the information at issue was presumed public.

In response to our notification, by letter dated, October 26, 1998, you submitted to this office certain responsive affidavits. As of the date of this letter, you have refused to provide our office with any other information. Therefore, this ruling only addresses the

submitted information. The remaining information for which you do not seek a decision is presumed to be public as provided by section 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling interest to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

You contend that the submitted affidavits are excepted from disclosure as "student records." 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 of the Government Code 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 of the Government Code 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.

"Education records" under FERPA 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.

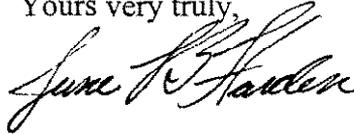
20 U.S.C. § 1232g(a)(4)(A). *See also* Open Records Decision Nos. 462 (1987), 447 (1986). The submitted documents pertain to sexual assault/harassment complaints that students have lodged against a former district employee. Most of the information in the submitted documents identifies the complainants who were contacted during the investigation of the complaints. The submitted documents are education records under FERPA, and, generally, must be withheld from disclosure only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978). If you have any questions about FERPA, please contact the following agency:

Family Policy Compliance Office
Department of Education
400 Maryland Ave., S.W.
Washington, D.C. 20202-4605
(202) 260-3887

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, written over the typed name.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 120741

Enclosures: Submitted documents

cc: Mr. Jon A. McCormick
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(w/o enclosures)