



June 4, 1999

Mr. Jerry Hoodenpyle
Rohne Hoodenpyle & Lobert, P.C.
1323 West Pioneer Parkway, Spur 303
Arlington, Texas 76013

OR99-1547

Dear Mr. Hoodenpyle:

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 124615.

The Burleson Independent School District (the "school district"), which you represent, received a request from the parent of a school district student for four categories of information concerning "complaints compiled against" the requestor. Specifically, you contend that the category of information at issue is the request for "the seven pages of complaints against" the requestor "on or about Feb 8 to Feb 12."¹ In response to the request, you submit to this office for review the information at issue. You indicate that "the school district is committed to complying with the act, however, "the District's position is that the information requested is not public information subject to the Act because it is personal information that belongs to an individual, and the District does not own or have a right of access to the information." See Gov't Code § 552.002. In the alternative, you contend these documents are excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.² We have considered the exception and arguments you raise, and have reviewed the information submitted.

¹As you have not raised an applicable exception for any other records, we assume that the responsive information, should it exist, has been released.

²In 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 FERPA 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.

We first address whether the records at issue are subject to the Public Information Act. Section 552.002(a) of the Government Code defines the meaning of “public information” for purposes of the act:

In this chapter, “public information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

- (1) by a governmental body; or
- (2) for a governmental body and the governmental body owns the information or has a right of access to it.

You contend that the documents at issue are not subject to the act because

[n]o law or ordinance requires the District to collect, assemble or maintain communications between individuals The subject of e-mail regards personal conflicts between individuals off campus. . . . the District does not possess records of these e-mail communications and they are in the sole possession of [a specified individual] on her home computer.

Under the facts presented, we agree that the records at issue are not information “collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business.” *See also* Open Records Decision Nos. 558 (1990), 462 (1987); *but see* Open Records Decision No. 332 (1982) (information withheld must be “reasonable and necessary to avoid personally identifying a particular student in the class”). Furthermore, the information at issue does not appear to be created by a school district employee, nor does it concern a school district employee. Accordingly, we conclude that these records are not subject to the Public Information Act.³ Therefore, the requestor is not entitled to obtain these records from the school district.

³We note that you did not submit your request for a decision to this office within ten business days of receiving the request for information as required under the act by section 552.301. When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is *presumed to be public*. *See* Gov’t Code § 552.302. Since we conclude that the information at issue is not subject to the act, we need not address the issues implicated by the school district’s failure to comply with section 552.301. As stated previously, we assume that any other responsive information which was not submitted, should it exist, will be released to the requestor, unless confidential by law. *See* Gov’t Code § 552.352 (distribution of confidential information is criminal offense).

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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 124615

encl: Submitted documents

cc: Mr. Van Gibbs
Address unavailable
(w/o enclosures)