



August 12, 1999

Ms. Laura S. Fowler  
Henslee, Fowler, Hepworth & Schwartz  
800 Frost Bank Plaza  
816 S. Congress Avenue  
Austin, Texas 78701-2443

OR99-2299

Dear Ms. Fowler:

On behalf of the Alief Independent School District (the "district"), you ask whether information concerning complaints against a certain teacher is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126791.

You contend that the requested information is confidential as student records and because it is private information. Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth business day after the date of receiving the written request. 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") 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 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. However, if a governmental body wishes to withhold any other information, it is required to seek an attorney general decision within ten business days. Gov't Code § 552.301. The requestor informs us that she had previously submitted an open records request to the district on May 6, 1999 and followed up with a second request on May 21, 1999. The requestor has provided this office with a copy of the prior written request. You did not request a decision from this office until June 1, 1999, more than ten business days after receipt of the requestor's original written request. Therefore, we conclude that the district failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten business days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publ'g Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977).

The information does include information that is confidential by law. You have submitted responsive documents with the names of students redacted. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "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. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 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.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). We agree that you must withhold the redacted information as information that may reveal or tend to reveal information about a student that must be withheld pursuant to FERPA.<sup>1</sup>

Next, you assert that the requested information is excepted from public disclosure as a private personnel matter. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to

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<sup>1</sup>We note that the student's or parent's entire name should be redacted, including first initials.

be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101 of the act.

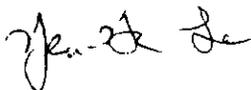
Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 at 4 (1976) (construing statutory predecessor to Gov’t Code § 552.101). We conclude that the submitted information does not contain highly intimate or embarrassing facts. Moreover, there is a legitimate public interest in the information as it concerns a public teacher’s work performance. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for public employee’s demotion, dismissal, or resignation). Therefore, the submitted information is not excepted by common-law privacy under section 552.101 or section 552.102. Except for the information redacted under FERPA, all other information must be released.

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.

Sincerely,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 126791

Encl.: Submitted documents

cc: Ms. Marjorie C. Nicol  
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(w/o enclosures)