



April 24, 2001

Ms. Stacy C. Ferguson
Schwartz & Eichelbaum, P.C.
517 Soledad Street
San Antonio, Texas 78205

OR2001-1627

Dear Ms. Ferguson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146361.

The United Independent School District (the "district"), which you represent, received a request for "all memorandum, disciplinary correspondence, employee conference forms, evaluations, and all other miscellaneous communication written by Zaffirini Elementary School principal Diana Miranda to teacher George J. Altgelt or about him." In particular, the requestor seeks a memorandum of December 8, 2000, wherein Ms. Miranda addresses an incident that occurred during a field trip taken by Mr. Altgelt and his class. You state that copies of the documents in question have previously been released to Mr. Altgelt. You further state that your office has just recently received a letter from Mr. Altgelt authorizing the district to release these documents to the requestor, and that it is not clear whether sections 552.023, 552.229, and 552.307 of the Government Code permit the district to release the requested documents under these circumstances. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code and section 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, marked as exhibits "B" and "C."

We note that you have not submitted any information concerning the December 8, 2000 memorandum, nor have you indicated that you seek to withhold it; therefore, we assume you have already released this information to the requestor. If you have not released this information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302.

With regard to exhibit "B," section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 provides that, "[any] document evaluating the performance of a teacher or administrator is confidential." This office 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.

After a review of exhibit "B," we conclude that one of the documents contained therein does not evaluate the teacher's performance. We have marked the document that you must release as it is not confidential under section 21.355. The release of the remaining documents within exhibit "B" is governed by the provisions of the Education Code. We note that with regard to the appraisal of teachers, section 21.352(a) of the Education Code provides:

(a) In appraising teachers, each school district shall use:

(1) the appraisal process and performance criteria developed by the [Commissioner of Education]; or

(2) an appraisal process and performance criteria:

(A) developed by the district- and campus-level committees established under Section 11.251;

(B) containing the items described by Sections 21.351(a)(1) and (2); and

(C) adopted by the board of trustees.

We further note that section 21.352(c) of the Education Code specifically provides that "[e]ach teacher is entitled to receive a written copy of the evaluation on its completion." It is well established that statutes governing access to a specific subset of information held by a governmental body prevail over the generally applicable Public Information Act. *See, e.g.*, Open Records Decision No. 478 at 2-3 (1987) (Public Information Act does not govern special rights of access granted under other statutes). If the remaining records before us represent an evaluation of the requestor as contemplated in section 21.352 of the Education Code, the district may not withhold the requested documents from the current requestor pursuant to any of the Public Information Act's exceptions. Otherwise, the district must withhold the records at issue in accordance with section 21.355.

With regard to exhibit "C," 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.

The Family Educational Rights and Privacy Act of 1974 ("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).

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 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 conclude exhibit "C" must be withheld from required public disclosure under FERPA only to the extent "reasonably and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). We have marked the types of information that may reveal or tend to reveal information about a student that must be withheld pursuant to FERPA. All other information found within exhibit "C" must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

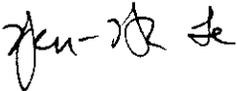
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DBF/seg

Ref: ID# 146361

Encl. Marked documents

cc: Ms. Maria Eugenia Guerra
1812 Houston Street
Laredo, Texas 78040
(w/o enclosures)