



August 13, 2001

Mr. Jay Youngblood  
Henslee, Fowler, Hepworth & Schwartz  
1116 Plaza Tower  
110 North College Avenue  
Tyler, Texas 75702

OR2001-3550

Dear Mr. Youngblood:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150630.

Henderson Independent School District (“HISD”), which you represent, received a request for all records relating to a certain teacher’s employment with HISD, and all statements relating to allegations against him. You have submitted documentation for our review, and assert that “certain of the documents requested are exempt from disclosure.” To the extent that HISD possesses information responsive to the request other than what you have submitted, we assume that HISD has released that information. If not, then HISD must promptly release the information to the requestor. *See* Gov’t Code §§ 552.301, .302. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.114, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We first address your claim under section 552.131 of the Government Code. Section 552.131 provides as follows:

- (a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.131. Because the legislature limited the protection of section 552.131 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You indicate only that the submitted information at issue relates to "a possible violation of board policy and/or civil law." Because you have failed to specify the civil, criminal, or regulatory law alleged to have been violated in this case, we conclude that you have failed to demonstrate the applicability of section 552.131(b). Accordingly, HISD may not withhold the submitted information under that section.

With regard to the claimed section 552.101<sup>1</sup> and 552.114<sup>2</sup> exceptions, you assert that the submitted information is excepted from required public disclosure under the Family Educational Rights and Privacy Act of 1974 ("FERPA"). In Open Records Decision

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<sup>1</sup>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.

<sup>2</sup>Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue.

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<sup>3</sup> 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. Because you have submitted information for our review and have requested a decision from this office, we will address your arguments against disclosure.

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). 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. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

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). Examples of student-identifying information include students' names, students' parents' or guardians' names, students' identification numbers, students' social security numbers, student's telephone numbers, students' birth dates, the home or mailing addresses of students, or other information that would make the student's identity easily traceable. *See* 45 C.F.R. § 99.3; Open Records Decision No. 165 (1977) After reviewing your argument and the submitted information, we conclude that the information constitutes "education records." Accordingly, RISD must not release without parental consent any information that identifies a particular student. In this case, we agree that the release of the most of the information you have highlighted in Exhibit B would make the identity of certain students easily traceable. *Cf.* Open Records Decision No. 224 (1979) (student identity held easily traceable through handwriting style if expression or particular incidents related). We have marked additional information that must be withheld under FERPA and section 552.114 of the Government

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<sup>3</sup>Section 552.026 provides that the Public Information Act does not require the release of information contained in education records of an educational agency or institution, except in conformity with FERPA.

questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office at the following address and telephone number:

Family Policy Compliance Office  
United States Department of Education  
600 Independence Avenue S.W.  
Washington, D.D. 20202-46055  
Tel: (202) 260-3887

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).

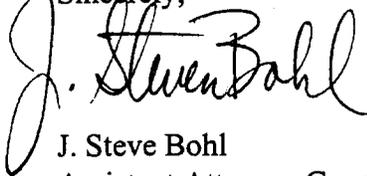
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,

A handwritten signature in black ink that reads "J. Steve Bohl". The signature is written in a cursive style with a large, looped initial "J".

J. Steve Bohl  
Assistant Attorney General  
Open Records Division

JSB/sdk

Ref: ID# 150630

Enc: Submitted documents

c: Mr. R. Daryll Bennett  
P.O. Box 2645  
Longview, Texas 75606  
(w/o enclosures)