OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 16, 2001

Ms. Sandra C. Houston
General Counsel
Arlington Independent School District
200 West Main Street
Arlington, Texas 76010

OR2001-4683

Dear Ms. Houston:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153416.

The Arlington Independent School District (the "district") received a written request for the "[c]omplete audit on Martin High School activity funds and baseball camp accounts, including names of all parties involved, including complainants." You state that the district has released a copy of the audit report to the requestor with the names of students and students' parents redacted. You contend that the redacted information is excepted from disclosure under sections 552.026 and 552.114 of the Government Code and under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.

Section 552.026 of the Government Code 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.

Gov't Code § 552.026. 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 numerated federal, state, and local officials and institutions,

unless otherwise authorized by the student's parent.[1] *See* 20 U.S.C. § 1232g(b)(1) (emphasis added). "Education records" is defined as 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. 20 U.S.C. § 1232g(a)(4)(A). We note, however, that information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978).

For purposes of FERPA, the requested audit constitutes an "education record" only to the extent that it contains information about identifiable students. After reviewing the information you redacted, we agree that some of the information would tend to identify particular students and, thus, must be withheld under FERPA. We have marked this information accordingly.[2] On the other hand, most of the information you seek to withhold does not pertain to any particular student, but rather merely identifies certain adults who happen to be the parents of students. This identifying information is not made confidential under FERPA.

However, some of this information contains family member information about a district employee. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, we will raise section 552.117(1) of the Government Code because the release of section 552.117(1) information could impair the rights of third parties and because the improper release of this information constitutes a misdemeanor. *See* Government Code § 552.352; *see also* Open Records Decision No. 325 at 1 (1982).

Section 552.117(1) of the Government Code requires that the district withhold, among other things, information "that reveals whether [a district employee] has family members," but only if the employee elected to keep this information confidential in accordance with section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, in order to withhold section 552.117(1) information from disclosure, a proper election must be made prior to the district's receipt of the request for information. If the employee did not elect prior to the district's receipt of the request to keep her family member information confidential under section 552.024, the redacted information we have marked may not be withheld from public

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[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 authorize the inspection of these records. 20 U.S.C. § 1232g(d).

[2]Because we resolve your request on other grounds, we need not address the applicability of section 552.114 of the Government Code to the records at issue.

disclosure based on section 552.117(1) of the Government Code. If the employee did make such an election, the district must withhold this information.

In summary, the only submitted information that the district must withhold under FERPA is the student identifying information that we have marked in red brackets. The district must also withhold the family member information we have marked as being protected under section 552.117(1), but only if the employee elected to keep this information confidential in accordance with section 552.024 prior to the district's receipt of the current records request. The remaining information that you have redacted 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).

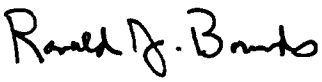
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/RWP/seg

Ref: ID# 153416

Enc. Marked documents

c: Ms. Tracey L. Myers
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(w/o enclosures)