Office of the Attorney General · State of Texas
John Cornyn

November 6, 2001

Mr. Thomas E. Myers
Brackett & Ellis
100 Main Street
Fort Worth, Texas 76102-3090

OR2001-5138

Dear Mr. Myers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 154440.

The Grapevine-Colleyville Independent School District (the "district"), which you represent, received a request for copies of audiotapes of specified meetings of the superintendents and the board, information pertaining to the number of times that formal notices were sent home with a specified student, and copies of the district disciplinary policy pertaining to conduct and behavior. The requestor also asks the district several questions in her request. We note that the Public Information Act does not require a governmental body to prepare answers to questions posed by a requestor. *See* Open Records Decision Nos. 563 at 8 (1990) (considering request for federal and state laws and regulations), 555 at 1-2 (1990) (considering request for answers to fact questions). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990). You state that you have provided the requestor with the disciplinary policies regarding conduct and behavior. You claim, however, that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.114 of the Government Code and the Family Educational Rights and Privacy Act ("FERPA"). We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the information that is responsive to request items 1, 3, and 5 is excepted from disclosure pursuant to section 552.114 of the Government Code and FERPA. In Open Records Decision No.634 (1995), this office concluded that (1) an educational agency or

institution may withhold information from disclosure that is protected by FERPA and excepted from disclosure under 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 information from disclosure that is excepted from 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. Since the district has made a determination that this information constitutes "student records," we conclude that the district must comply with FERPA guidelines in withholding it from the requestor.

You also claim that the information that is responsive to request item 2 is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with sections 551.104(c) and 551.146 of the Government Code.[1] Section 551.104(c) provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). We assume for purposes of this ruling that no applicable court order has been issued with regard to the responsive audiotapes. Based on that assumption, the requested audiotapes cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Accordingly, the district must withhold the requested audiotapes from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

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

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[1] Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

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/seg

Ref: ID# 154440

cc: Mr. Howard Wells, Jr.
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