



March 4, 2002

Mr. Wayne D. Haglund
Law Offices of Wayne D. Haglund, P.C.
P.O. Box 713
Lufkin, Texas 75902-0713

OR2002-1046

Dear Mr. Haglund:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 159375.

The Coldspring-Oakhurst Consolidated Independent School District (the "district"), which you represent, received a request for information regarding an alleged fight involving the requestor's child and for information regarding students placed in "AEP," with the latter information broken down by month, race, length of attendance, reason for placement, and whether a teacher or staff member was present. You inform us that the district will release some of the requested information, but that it does not maintain a list regarding placement in AEP that shows the students' race or whether a teacher or staff member was present.¹ Furthermore, you claim that portions of the remaining requested information are excepted from disclosure under sections 552.026 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The district asserts that portions of the submitted information must be withheld pursuant to sections 552.026 and 552.114 of the Government Code and the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. FERPA provides that no federal funds will be

¹We note that the Public Information Act applies only to information in existence and does not require a governmental body to prepare new information. See Open Records Decision Nos. 605 (1992), 572 (1990), 558 (1990). However, we further note that a governmental body must make a good faith effort to relate a request to information it holds, which it appears the district has done in this case. Open Records Decision No. 561 (1990).

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. *See* 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 [FERPA]."

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution must 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 must 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. In this instance, however, you have submitted the documents at issue to this office for consideration. Therefore, we will consider whether these documents contain information that is excepted from disclosure under sections 552.026 and 552.114 of the Government Code.

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). For purposes of FERPA, a student's handwritten letters constitute "education records" in that they contain information about an identifiable student. *See* Open Records Decision No. 224 (1979) (student's handwritten comments that would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in comments protected under FERPA). After reviewing your representations and the submitted information, we agree that you must withhold the information you have marked in the discipline reports under sections 552.026 and 552.114. As for the remaining submitted information, we have marked the types of information that may reveal or tend to reveal information about a student and that must, therefore, be withheld under sections 552.026 and 552.114. However, we note that FERPA provides the requestor a right of access to information that identifies the requestor's child. *See* 20 U.S.C. 1232g. All other information must be released.

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).

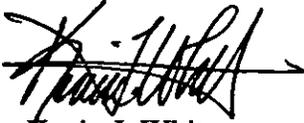
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. 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, appearing to read "Kevin J. White", with a horizontal line drawn through it.

Kevin J. White
Assistant Attorney General
Open Records Division

KJW/seg

Ref: ID# 159375

Enc. Submitted documents

c: Ms. Cynthia Tilley
P.O. Box 97
Oakhurst, Texas 77359
(w/o enclosures)