



May 7, 2002

Ms. Lisa B. Silvia
Paralegal
Fort Worth Independent School District
100 North University Drive, Suite NW 130
Fort Worth, Texas 76107

OR2002-2415

Dear Ms. Silvia:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162507.

The Fort Worth Independent School District (the “district”) received a request for a copy of information in any district file of a specified teacher. You state that you are releasing some responsive information to the requestor, the teacher’s authorized representative.¹ You claim, however, that the submitted information is excepted from disclosure pursuant to section 552.135 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.135 of the Government Code provides:

(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].

¹ We note that a person or person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from disclosure by laws intended to protect that person’s privacy interests. See Gov’t Code § 552.023(a).

(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 § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under section 552.135 must clearly identify the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A).

You state that the information concerns a report of the teacher's alleged violation of chapter 247 of the Texas Administrative Code. Although you claim that Principles I, III, and V of chapter 247 of title 19 of the Texas Administrative Code may have been violated by the educator in this instance, you failed to sufficiently demonstrate how any of these principles applies to the complained-of activity and how a violation of each particular principle constitutes a violation of criminal, civil, or regulatory law under section 552.135. *See* Gov't Code § 552.301(e)(1)(A). Therefore, we find that the district has not demonstrated that the conduct reported to the district concerns a possible violation of criminal, civil, or regulatory law under section 552.135. Accordingly, we conclude that the district may not withhold any portion of the information from disclosure pursuant to section 552.135 of the Government Code.

We note, however, that portions of the information are subject to the Family Educational Rights and Privacy Act ("FERPA"). 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. *See id.* § 1232g(a)(4)(A).

Information must be withheld from 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). This includes information that directly identifies a student, as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments making identity of student easily traceable through handwriting, style of expression, or particular incidents related in comments protected under FERPA). Based on our review of the information, we conclude that some portions of the information, that we have marked, constitute personally identifiable information contained in a student's education records. Accordingly, we conclude that the district must withhold the marked information from disclosure pursuant to FERPA. *See* Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978).

In summary, the district must withhold the marked information from disclosure pursuant to FERPA. The district must release the remaining information 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

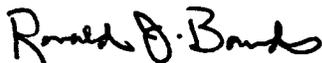
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure 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 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/seg

Ref: ID# 162507

Enc: Marked documents

cc: Ms. Tanya Dawson
United Educators Association
4900 S.E. Loop 820
Fort Worth, Texas 76140
(w/o enclosures)