



June 7, 2002

Ms. Elizabeth G. Neally
Roerig, Oliveira & Fisher
855 West Price Road, Suite 9
Brownsville, Texas 78520-8786

OR2002-3093

Dear Ms. Neally:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164072.

The Brownsville Independent School District (the “district”), which you represent, received a request for information relating to a named individual. You indicate that the district has released some of the requested information. The district asserts that the only other information that is responsive to this request is excepted from disclosure under sections 552.108, 552.111, 552.114, and 552.135 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. § 1232g.¹ We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that this request for information consists of a series of questions. Chapter 552 of the Government Code does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, a governmental body that receives a request for information must make a good-faith effort to relate the request to information that is within the governmental body’s possession or control. *See* Open Records Decision No. 561 at 8-9 (1990). We assume that the submitted information is the result of the district’s good-faith effort to identify information that is responsive to this request.

The district claims that FERPA is applicable to the submitted information. FERPA provides that no federal funds will be made available under any applicable program to an educational

¹The Seventy-seventh Legislature renumbered former section 552.131, “Exception: Certain Information Held by School District,” as section 552.135. The revision was non-substantive. *See* Act of May 22, 2001, 77th Leg., R.S., ch. 1420, § 21.001(54), 2001 Tex. Sess. Law Serv. 3970, 4309 (Vernon).

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); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information).

Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). 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 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. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

Section 552.114(a) of the Government Code excepts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995).

In Open Records Decision 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 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 from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code 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. *See* Open Records Decision No. 634 at 6-8 (1995).

In this instance, the district has submitted the responsive information that it believes to be subject to FERPA. Therefore, we will address the applicability of FERPA to that information. We agree that FERPA is applicable to some of the submitted information. Generally, FERPA requires that information be withheld from the public only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978). In this particular instance, however,

the requestor already knows the name of the student to whom the information in question pertains. Thus, under these circumstances, withholding only some of the information would not sufficiently protect the identity of the subject of the information. *See* 34 C.F.R. § 99.3 ("personally identifiable information" includes, among other things, "[o]ther information that would make the student's identity easily traceable"). Therefore, we conclude that the information that we have marked is confidential in its entirety under FERPA. The district must not release that information unless it is authorized under FERPA to do so.

We note, however, that the district's police department created the remaining information. You inform us that this information is the result of a law enforcement investigation. Under FERPA, the term "education records" does not include "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); *see also* 34 C.F.R. §§ 99.3, 99.8; Open Records Decision No. 612 (1992). We therefore conclude that FERPA is not applicable to the remaining information.

However, we must consider whether this information is confidential under section 552.101 of the Government Code.² Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception protects information that another statute makes confidential. Chapter 261 of the Family Code governs investigations of suspected child abuse or neglect. Section 261.201 provides in part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

²Unlike other exceptions to disclosure under chapter 552 of the Government Code, we will raise section 552.101 on behalf of the governmental body, because chapter 552 prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 (1982).

Fam. Code § 261.201(a). We find that the remaining information was used or developed in connection with an investigation under chapter 261 of the Family Code or in providing services as a result of an investigation. We note that section 261.301 of the Family Code authorizes a local law enforcement agency to conduct a child abuse investigation under chapter 261. *See id.* § 261.301(c). For the purposes of this decision, we assume that the district's police department constitutes a local law enforcement agency with authority to conduct a child abuse investigation under chapter 261. You have not informed this office of any rule adopted by the district's police department that would permit the release of the remaining information to this requestor. Therefore, assuming that no such rule exists, we find that the remaining information is confidential in its entirety under section 261.201 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing statutory predecessor). Thus, the remaining information, which we have marked, is excepted from disclosure under section 552.101 of the Government Code as information made confidential by law.

In summary, some of the submitted information is confidential in its entirety under FERPA and must not be released unless the district has authority under FERPA to do so. The remaining information is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. As we are able to make these determinations, we need not address the other exceptions you raise.

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

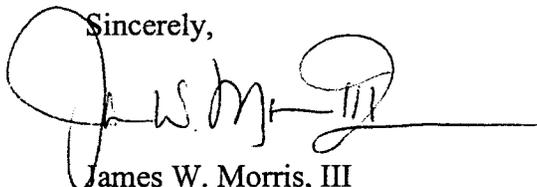
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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 "James W. Morris, III", with a horizontal line extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 164072

Enc: Marked documents

c: Mr. Anthony Caskey
The Brownsville Herald
1135 East Van Buren
Brownsville, Texas 78520
(w/o enclosures)