



June 21, 2002

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

OR2002-3397

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# 164728.

The Fort Worth Independent School District (the "district") received a request for the investigative file on a named individual. You state that you are making some of the requested information available to the requestor. However, you claim that the submitted documents, Enclosures 2 and 3, are excepted from disclosure under sections 552.101 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Family Educational Rights and Privacy Act ("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 the portions of Enclosure 2 which we have marked constitute personally identifiable information contained in a student's education records. The district must withhold the student identifying information in accordance with FERPA.¹ *See* Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978).

We also note that Enclosure 2 contains polygraph information that must be withheld under section 1703.306 of the Occupations Code. Section 1703.306 provides that:

(a) A polygraph examiner, trainee, or employee of a polygraph examiner, or a person for whom a polygraph examination is conducted or an employee of the person, may not disclose information acquired from a polygraph examination to another person other than:

- (1) the examinee or any other person specifically designated in writing by the examinee;
- (2) the person that requested the examination;
- (3) a member, or the member's agent, of a governmental agency that licenses a polygraph examiner or supervises or control a polygraph examiner's activities;
- (4) another polygraph examiner in private consultation; or
- (5) any other person required by due process of law.

(b) The board or any other governmental agency that acquires information from a polygraph examination under this section shall maintain the confidentiality of the information.

Occ. Code § 1703.306. We have marked those portions of Enclosure 2 that were obtained through polygraph examinations. It does not appear that any of the exceptions in section 1703.306 apply to this information. *See* Open Records Decision 565 (1990) (construing predecessor statute.) Accordingly, the marked information is confidential pursuant to section 1703.306 of the Occupations Code and is therefore excepted from disclosure under section 552.101 of the Government Code.

We also note that Enclosure 2 contains the social security number of a former employee. Section 552.117 excepts from disclosure the social security numbers of former employees of a governmental body who request that this information be kept confidential under

¹As we are able to make this determination, we need not address your claim under section 552.135.

section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf the former employee if he made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the former employee timely elected to keep his personal information confidential, the district must withhold the employee's social security number. The district may not withhold this information under section 552.117 if the former employee did not make a timely election to keep the information confidential.

If the former employee did not timely elect to keep his social security number confidential, the number may nevertheless be confidential. Under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), a social security number is confidential if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). You have cited no law, nor are we aware of any law enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number in question was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing the former employee's social security number the district should ensure that the number was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Finally, the district seeks to withhold Enclosure 3 in its entirety as information that is confidential by law. Specifically, you state that Enclosure 3 is an investigation of alleged child abuse conducted by the Texas Department of Protective and Regulatory Services ("DPRS"). Information relating to child abuse investigations is subject to Chapter 261 of the Family Code. Section 261.201(a) of the Family Code provides as follows:

(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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

After reviewing the information, we agree that Enclosure 3 falls within the scope of section 261.201. We note that, under section 261.406 of the Family Code, the district is authorized to receive these types of records. *See* Fam. Code § 261.406(b) (providing that DPRS shall send written report of its investigation to governing board of school where alleged incident occurred). Furthermore, you assert, and we agree, that an entity that is authorized to receive confidential information from DPRS is required to maintain the confidentiality of such records and prevent disclosure to any unauthorized person. *See* Hum. Res. Code § 40.005(d). It does not appear that the requestor is an entity authorized to receive the submitted documents. *See generally* Fam. Code § 261.201(a) (providing that records subject to Fam. Code § 261.201 may be disclosed only for purposes consistent with Fam. Code and applicable federal or state law or under rules adopted by investigating agency). Accordingly, the district must withhold Enclosure 3 pursuant to section 552.101 as information that is confidential by law.

In summary, the district must withhold the student identifying information, which we have marked, pursuant to FERPA. The district must withhold the polygraph information, which we have marked, under section 552.101 in conjunction with section 1703.306 of the Occupations Code. The social security number, which we have marked, must be withheld under section 552.117 if the former employee made a timely election to keep the information confidential. The remaining information in Enclosure 2 must be released. The district must withhold Enclosure 3 in its entirety pursuant to section 552.101 as information that is confidential by law.

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,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 164728

Enc: Submitted documents

c: Mr. Tom Corbin
United Educators Association
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Fort Worth, Texas 76140
(w/o enclosures)