



July 2, 2002

Ms. Cynthia S. Beuchler
Beuchler & Associates
814 San Jacinto Blvd., Suite 408
Austin, Texas 78701-2404

OR2002-3596

Dear Ms. Beuchler.:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165092.

The Crowley Independent School District (the "district"), which you represent, received a request for "all documentation and records of any and all investigations that have been initiated regarding" the requestor. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, 552.108, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You first contend that the records submitted as Exhibit C are excepted from disclosure under section 552.108 of the Government Code. Section 552.108 states that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). The district is neither a law enforcement agency nor a prosecutor. However, this exception may be asserted by a custodian of records on behalf of another governmental body which is a law enforcement agency or prosecutor. *See, e.g.,* Open

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Records Decision Nos. 474 (1987), 372 (1983) (where incident involving allegedly criminal conduct is still under active investigation or prosecution, section 552.108 may be invoked by any proper custodian of information which relates to incident). The records in Exhibit C are records of the Crowley Police Department that relate to a criminal case which you state is ongoing. You further indicate that release of these records would hinder further investigation and interfere with law enforcement. Based on these representations, we find that release of the documents in Exhibit C would interfere with the detection, investigation, or prosecution of crime. Therefore, we conclude that the district may withhold this information under section 552.108(a)(1).

The district also claims that FERPA is applicable to a portion of the submitted information. 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); *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).

Upon review of the information submitted as Exhibits D and E, as well as a portion of the information submitted as Exhibit B,² we conclude that FERPA is applicable to this information in its entirety. 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 students to whom the information in question pertains. In addition, some of the submitted education records contain students' handwriting. Thus, under these circumstances, withholding only some of the information would not sufficiently protect the identity of the subjects 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"); *see also* 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). Therefore, we conclude that the information submitted in Exhibits D and E is confidential in its entirety under FERPA. We have marked the information in Exhibit B that is confidential pursuant to FERPA. The district must not release that information unless it is authorized under FERPA to do so. As we are able to make this determination, we need not address your other argument for the information contained in Exhibit D.

With also note that Exhibit B contains information that is subject to section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who make a timely request that this information be kept confidential under section 552.024. This information may not be withheld, however, if the current or former official or employee made the request for confidentiality under section 552.024 after the request for information was made. However, section 552.023 states that a person or a person's authorized representative has a special right of access to information that relates to the person and that is protected from disclosure by laws intended to protect the person's privacy interest. In this instance, the requestor is the

²Although you appear to have submitted the information in Exhibit B for informational purposes and make no arguments for withholding this information, we find that this information is responsive to the request, and that a portion of this information is confidential. The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).*

teacher whose information is at issue. Therefore, the district must release to the requestor the information in Exhibit B that may be protected by section 552.117.³

Exhibit B also contains information excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, the district must withhold from disclosure the driver's license numbers in Exhibit B pursuant to section 552.130.

Finally, we note that Exhibit B contains social security numbers. A social security number also may 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), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the district to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the district should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

To summarize, the district may withhold the information in Exhibit C under section 552.108(a)(1). The information in Exhibits D and E, and the information we have marked in Exhibit B, must be withheld from the requestor under section 552.114 and FERPA. Driver's license numbers must be withheld from the information in Exhibit B under section 552.130. Social security numbers must be withheld from the information in Exhibit B if they were obtained and or maintained pursuant to any provision of law enacted on or after October 1, 1990. As you make no arguments for withholding the remainder of the information in Exhibit B, this information must be released to the requestor. *Cf.* Open Records Decision No. 612 (concluding that campus police department records were not excepted by statutory predecessor to section 552.101, incorporating FERPA, or statutory predecessor to section 552.114; campus police offense and arrest reports do not fit within any of these accepted categories of "student records").

³ Because this information may be confidential with respect to the general public, if the district receives a future request for this information from an individual other than the requestor, the district should again seek our decision.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 165092

Enc. Submitted documents

c: Ms. Toy Angell
8206 Summerview Court
Fort Worth, Texas 76123

(w/o enclosures)