



July 10, 2002

Ms. Jennifer Lehmann
Escamilla & Poneck, Inc.
P. O. Box 200
San Antonio, Texas 78291-0200

OR2002-3729

Dear Ms. Lehmann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165488.

The San Antonio Independent School District (the "district"), which you represent, received a request for copies of documents contained in the requestor's Sam Houston High School file. You state that you will release all information in the requestor's file, with the exception of particular handwritten student statements. You claim that these statements are excepted from disclosure pursuant to sections 552.026, 552.114, and 552.131 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA").¹ We have considered the exceptions you claim and have reviewed 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). Section 552.026 of the Government Code incorporates FERPA into the Public Information Act. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides:

¹ We note that former section 552.131, "Exception: Certain Information Held by School District," was renumbered as section 552.135 by the Seventy-seventh Legislature, effective September 1, 2001. *See* Act of May 22, 2001, 77th Leg., R.S., H.B. 2812, § 21.001(54) (codified at Gov't Code § 552.135). The revision was non-substantive.

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" 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 your arguments and the information at issue, we find that the information in its entirety constitutes personally identifiable information contained in a student's education records. Accordingly, we conclude that the district must withhold the information from disclosure pursuant to FERPA. *See Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978)*. Because we base our ruling on FERPA, we need not address your remaining claims.

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

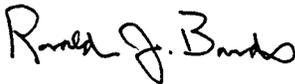
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The 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/sg

Ref: ID# 165488

Enc: Submitted documents

c: Mr. Larry Garcia
c/o Escamilla & Poneck, Inc.
(w/o enclosures)