



July 22, 2002

Mr. Edgar O. Coble, Jr.
Law Offices of Edgar O. Coble, Jr.
2200 Forest Park Boulevard, Suite 106
Fort Worth, Texas 76110

OR2002-3996

Dear Mr. Coble:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165971.

The Grand Prairie Independent School District (the "district"), which you represent, received a request for copies of seven categories of information as follows:

1. an "April 25, 2002, videotape";
2. a former district employee's personnel records;
3. the Director of Transportation's notes regarding a specified "verbal warning"
4. a videotape which recorded a specified incident during the 2001 - 2002 school year;
5. discipline referrals and documentation of discipline action taken against two female students involved in a specified incident;
6. documentation regarding student discipline management procedures for district bus drivers or transportation employees; and
7. Information pertaining to a specified sign located in a bus driven by the former district employee.

You state that you have made available to the requestor information that is responsive to request items 2, 3, 6, and 7. You also state that the district does not maintain any information that would be responsive to request item 4.¹ You claim, however, that the submitted information, which is responsive to request items 1 and 5, or portions thereof are excepted from disclosure pursuant to sections 552.026, 552.101, and 552.114 of the Government Code, as well as the Family Educational Rights and Privacy Act ("FERPA"). We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.114 of the Government Code excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and the Family Educational Rights and Privacy Act ("FERPA"). *See* Open Records Decision No. 539 (1990). 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). 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 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 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.

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. Based on our review of your arguments and the submitted information that is responsive to request items 1 and 5, we conclude that the entirety of the videotape that is responsive to request item 1 and some of the information that is responsive to request item 5, which we have marked, constitutes personally identifiable information contained in a student's education records. Accordingly, we conclude that the district must withhold the

¹ We note that it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. *See* Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. *See* Attorney General Opinion H-90 (1973); *see also* Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. *See* Open Records Decision No. 561 at 8 (1990).

entirety of the videotape, as well as the marked student-identifying information in the documents that are responsive to request item 5, from disclosure pursuant to section 552.114 of the Government Code in conjunction with FERPA. *See* Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978). However, the district must release the remaining information that is responsive to request item 5 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).

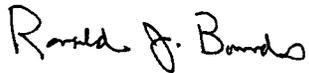
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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# 165971

Enc. Marked documents

cc: Ms. Ann H. Pogue
Vice President/Grievance Coordinator
Grand Prairie Federation of Teachers
P.O. Box 530626
Grand Prairie, Texas 75053-0626
(w/o enclosures)