



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 20, 2002

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204-5491

OR2002-7345

Dear Ms. McGowan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 174050.

The Dallas Independent School District (the "district") received a request for an investigation report relating to a named teacher and student. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.135 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the information you submitted.

We first note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

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. Gen. Laws 3970, 4309 (Vernon) (codified as Gov't Code § 552.135).

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation made of, for, or by the district. Therefore, the district must release this information under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 or expressly confidential under other law.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, 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).

We find that FERPA is applicable to 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 submitted information pertains. Thus, under these circumstances, withholding only some of the information would not sufficiently protect the identity of the student. *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 submitted information is confidential in its entirety under FERPA. The district must not release this information unless it has authority under FERPA to do so. As we are able to make this determination, we need not address your arguments against disclosure.

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". The signature is fluid and cursive, with a large initial "J" and "M".

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

JWM/sdk

Ref: ID# 174214

Enc: Submitted documents

c: Mr. James Paul Barklow, Jr.
6116 North Central Expressway Suite 500
Dallas, Texas 75206
(w/o enclosures)