



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 10, 2003

Mr. William C. Bednar
Law Office of William C. Bednar
712 West 14th Street, Suite A
Austin, Texas 78701-1708

OR2003-1551

Dear Mr. Bednar:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179875.

The Lake Travis Independent School District (the "district"), which you represent, received a request for all information pertaining to the requestors' son. The district has released all of the information except for an audiotape and certified agenda of a closed meeting. The district asks whether the audiotape and certified agenda are protected under section 551.104 of the Government Code.

The district states, and we agree, that it has not sought an open records decision from this office within the statutory ten-day deadline. *See* Gov't Code § 552.301. The district's delay in this matter results in the presumption that the requested information is public. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ). In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381. The applicability of section 552.101 provides such a compelling reason.

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by law. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying *only under a court order issued under Subsection (b)(3).*" Gov't Code § 551.104(c) (emphasis added). The district explains that the agenda covers all topics including the grievance concerning the student. The audiotape recorded only the portion of the meeting pertaining to the grievance.

However, the audiotape and portion of the agenda concerning the student are also subject to the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. 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 numerated 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" are defined as 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. 20 U.S.C. § 1232g(a)(4)(A). In this instance, the audiotape and portion of the agenda concerning the student constitute "education records." FERPA provides parents with an affirmative right of access to their child's education records. 20 U.S.C. § 1232g(a)(1)(A). Where a state statute, such as section 551.104(c), conflicts with FERPA, the state statute is preempted by the federal law. *See, e.g., Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995); *see also* Open Records Decision No. 431 (1985) (FERPA prevails in conflict with state law).

This office consulted with the Family Policy & Regulations Office of the United States Department of Education ("DOE") regarding your request. The DOE advised as follows:

FERPA does not require that education records relate exclusively to a student or be created for any particular purpose, only that they contain information that is directly related to the student.

.....

In sum, and to more specifically answer your question, under FERPA, the recording [of an executive session pertaining to a student] you referenced is an "education record" under FERPA.

.....

We are not familiar with the state law you noted and, therefore, do not know if the law conflict[s] with FERPA. However, if the state law prohibited the school district from providing a parent with access to the education records of his or her child, that would constitute a conflict. If an educational agency or institution wishes to continue to receive federal education funds, they must comply with FERPA.

Because the requestors are the parents of a district student who is the subject of the audiotape and a portion of the agenda, we conclude the district must release the audiotape and portion of the agenda concerning the requestors' son to them.¹

¹If you have questions as to the applicability of FERPA to the information at issue, you may wish to consult with the DOE at (202) 260-3887.

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).

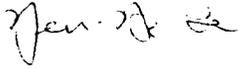
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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 cursive script, appearing to read "Yen-Ha Le".

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 179875

c: Mr. & Mrs. Tom Gouris
13405 Saddle Back Pass
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