



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

April 4, 2003

Mr. Joe A. De Los Santos
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2003-2267

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178936.

The Southside Independent School District (the "district"), which you represent, received two requests from the same requestor. The first request, dated January 11, 2003, seeks (1) a copy of the tape recording made during a grievance conference on January 8, 2003; (2) "the time, date, and name of the individual submitting the 2002-2003 Carl Perkins Grant on behalf Southside High School;" and (3) "a copy of every document that is contained by [a named district administrator] as it pertains to or alludes to [the requestor]." The second request, dated January 15, 2003, seeks the administrator's salary worksheet, contract, certificates, transcripts, acceptable use policy agreement, purchasing guidelines agreement statement, code of ethics agreement, and evaluations for the past three years. You state that the district has released the information responsive to the first request, with student identifying information redacted.¹ With respect to the second request, you state that the requested evaluations do not exist. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was

¹ The Family Educational Rights and Privacy Act ("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). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990). This office has determined that a governmental body may withhold student identifying information that is protected by FERPA and excepted from disclosure under section 552.114 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions. Open Records Decision No. 634 (1995).

received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.–San Antonio 1978, writ dism'd); Open Records Decision No. 452 at 3 (1986). You further claim that portions of the remaining information responsive to the second request are excepted from disclosure under sections 552.102 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.102 of the Government Code protects from disclosure most information on a transcript from an institution of higher education maintained in the personnel files of professional public school employees. Gov't Code §552.102(b). Section 552.102 excepts from disclosure all information from transcripts other than the employee's name, the courses taken, and the degree obtained. Open Records Decision No. 526 (1989). Upon review of the submitted transcripts, we have marked the information that the district must withhold pursuant to section 552.102(b) of the Government Code.

Next, section 552.117 of the Government Code 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 request that this information be kept confidential under section 552.024 of the Government Code. You have submitted documentation showing that the employee at issue requested that her personal information be kept confidential prior to the date of the present request. We have marked the information that the district must withhold pursuant to section 552.117(1) of the Government Code. The remainder of the submitted information must be released 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 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 178936

Enc: Submitted documents

c: Mr. John R. Gonzalez
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(w/o enclosures)