



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 28, 2003

Mr. Gilbert Vasquez  
The Vasquez Law Firm, P.C.  
814 Del Oro Lane  
Pharr, Texas 78577

OR2003-5167

Dear Mr. Vasquez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 184859.

The Pharr-San Juan-Alamo Independent School District (the "District"), which you represent, received a request for copies of the following two categories of information:

1. Any list, or summary information, which shows the names, dates of birth, addresses [sic] for all students enrolled [at a specified school] for each semester of the following school years: 1997-98; 1998-99; 1999-00; 2000-01; 2001-02; 2002-03 up through the present.
2. Any list, or summary information, which shows the names, dates of birth, addresses [sic] for all employees of [a specified school] for each semester of the [school years listed above].

You inform us that the District has sent copies of the requested employee files to the requestor as well as other responsive information. You assert the submitted information is excepted from disclosure under sections 552.026 and 552.114 of the Government Code, as well as the Family Educational Rights and Privacy Act of 1974 ("FERPA"). We reviewed the information you submitted and considered the exceptions you claim.

Initially, we address the District's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You state that the District received the present request for information on May 7, 2003. Therefore, you should have submitted to this office all information required by section 552.301(e) no later than May 29, 2003. We received a facsimile of the request for information on July 17, 2003. Accordingly, we conclude the District has not complied with the requirements of section 552.301 of the Government Code.

According to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling interest exists when some other source of law makes the information confidential or third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Because FERPA and sections 552.026 and 552.114 provide compelling reasons to overcome the presumption of openness, we will address your arguments under these provisions.

You assert the submitted information is governed and protected from disclosure by FERPA. Section 552.026 of the Act 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 [FERPA]." 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.<sup>1</sup> *See* 20 U.S.C. § 1232g(b)(1). When a student has attained the age of eighteen years or is attending an institution of postsecondary education, the student holds the rights accorded by Congress to authorize the inspection of these records. *Id.* § 1232g(d).

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<sup>1</sup>Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Gov't Code § 552.114(a). This office generally applies the same analysis under section 552.114 and FERPA. *See* Open Records Decision No. 634 at 5 (1995).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution must 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 must 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. Nevertheless, you have submitted documents at issue to this office for our consideration; therefore, we will consider whether Exhibit A contains information excepted from disclosure under FERPA.

FERPA defines "education records" 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). An educational institution or agency must release "directory information" to the public if the educational institution or agency has designated the information as such in compliance with certain procedures and the appropriate individual has not objected to such release. *See id.* § 1232g(b)(1), (d). Section 1232g(a)(5)(B) provides as follows:

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

*Id.* § 1232g(a)(5)(B). Federal regulations state that directory information includes, but is not limited to, the following information: "the student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, major field of study, dates of attendance, grade level, enrollment status (e.g., undergraduate or graduate; full-time or part-time), participation in officially recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, and the most recent educational agency or institution attended." 34 C.F.R. § 99.3.

In this instance, the requestor seeks the names, dates of birth, and addresses of current and former students.<sup>2</sup> Clearly, such information constitutes directory information under FERPA. Further, the District maintains the information in Exhibit A and it directly relates to current and former students. You do not inform us as to what categories of information, if any, the District designates as directory information. Therefore, we conclude that if the District has designated the requested information as directory information, then the District must release the information after complying with federal notice requirements for release of directory information. *See* 20 U.S.C. § 1232g(a)(5)(B); 34 C.F.R. § 99.37. If the District has not designated the requested information as directory information, then the District must withhold the information under section 552.101 of the Government Code in conjunction with FERPA.

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).

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<sup>2</sup> We note that the submitted documents contain information that is not sought by the requestor. Therefore, as such information is unresponsive to the request for information, this ruling does not address such information, which the District need not release to the requestor.

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,



Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 184859

Enc: Submitted documents

c: Mr. Eduardo Roberto Rodriguez  
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