



ATTORNEY GENERAL OF TEXAS

GREG ABBOTT

August 13, 2003

Mr. Kevin W. Cole
Cole & Powell
400 West 15th Street, Suite 304
Austin, Texas 78701

OR2003-5660

Dear Mr. Cole:

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# 185849.

The Austin Independent School District (the "District"), which you represent, received a request for copies of the following categories of information: 1) accident reports involving students and teachers for the 12 high schools and 18 middle and junior high schools for a specified period of time, 2) the names of each SRO for 32 schools, including copies of the officers' training for the past 24 months, 3) the Crisis and Emergency Plan submitted by each school principal, including the Emergency Response Manual, and 4) Emergency Care Cards for Reagan High School.¹ You inform us that the District has produced information responsive to category two of the request. Further, you explain that the District has agreed to make category three documents available to the requestor for review and inspection. You assert the remaining requested information is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code. We reviewed the information you submitted and considered the exceptions you claim.

Initially, we address your assertion that Exhibits B and C contain information subject to the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either

¹ We note that the District no longer uses Emergency Care Cards; however, the District has submitted a representative sample of the Student Registration and Data Verification Form as responsive to this portion of the request. We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

constitutional, statutory, or by judicial decision.” Section 552.101 incorporates information protected by other statutes. Section 159.002 of the MPA reads, in part, as follows:

(a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient’s behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a), (b), (c). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). In this instance, Exhibits B and C consist of accident report forms completed by District personnel, not a physician or someone working under the supervision of a physician. Therefore, we conclude Exhibits B and C do not contain the type of information contemplated by the MPA. Accordingly, the District may not withhold these exhibits under section 552.101 in conjunction with the MPA.

Next, we address your arguments under sections 552.026 and 552.114 of the Government Code. 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 Family Educational and Privacy Rights Act of 1974 . . . (‘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. *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. *Id.* § 1232g(a)(4)(A).

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 consideration; therefore, we will consider whether Exhibits B and D contain information excepted from disclosure under sections 552.026 and 552.114 of the Government Code.

In this instance, the District maintains the information at issue, which directly relates to students. Therefore, we agree Exhibits B and D constitute education records as defined by FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). FERPA requires an educational institution to withhold information from required public disclosure only to the extent "reasonable and necessary to avoid personally identifying a particular student or one or both of the student's parents." Open Records Decision Nos. 332 (1982), 206 (1978). Information that directly identifies a student includes information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). Here, we find no evidence that the requestor is the parent or legal guardian of any of the students at issue. *See* 20 U.S.C. § 1232g(a)(1)(A) (granting parents access to the education records of their children). Moreover, the requestor has not provided the District with written authorization from a parent or legal guardian of any of the students granting him access to the submitted records. *See* 20 U.S.C. § 1232g(b)(1). Therefore, we agree that the District must withhold portions of Exhibits B and D to satisfy the requirements of FERPA. We have marked a representative sample of the types of information the District must withhold under FERPA. After the District makes the necessary redactions, it must release the remainder of Exhibits B and D to the requestor.

Last, we note Exhibit C contains information governed by section 552.117 of the Government Code. Section 552.117(a)(1) 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 timely request that this information be kept confidential under section 552.024 of the Government Code.² *See* Gov't Code § 552.117(a)(1). Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5

² In Senate Bill 1388, which became effective on June 20, 2003, the Seventy-eighth Legislature amended section 552.117 of the Government Code by adding "(a)" to the relevant language of this provision. *See* Act of May 30, 2003, 78th Leg., R.S., S.B. 1388, § 1 (to be codified as an amendment to Gov't Code sec. 552.117).

(1989). The information at issue may not be withheld from disclosure under section 552.117(a)(1) if the employees did not request confidentiality for this information in accordance with section 552.024 or if the request for confidentiality under section 552.024 for the information was not made until after the District received the request for information. Accordingly, we conclude the District must withhold the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees under section 552.117(a)(1) of the Government Code if the individuals timely elected confidentiality for this information in accordance with section 552.024 of the Government Code prior to the time the District received this request for information. We have marked a representative sample of the types of information the District must withhold under this provision, if applicable.

In summary, the District must withhold student-identifying information contained in Exhibits B and D under section 552.101 of the Government Code and FERPA. The District must withhold personal information in Exhibit C under section 552.117(a)(1) of the Government Code if the current or former officials or employees at issue timely elected confidentiality in accordance with section 552.024 of the Government Code prior to the District's receipt of the present request for information. We have marked a representative sample of information the District must withhold under FERPA and section 552.117, if applicable. The District must release the remainder of the submitted information 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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 185849

Enc: Submitted documents

c: Mr. Nelson E. Linder
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(w/o enclosures)