



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2003

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2003-7576

Dear Ms. Perry:

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# 189826.

The Coppell Independent School District (the "District"), which you represent, received a request for access to information, including audiotapes and videotapes, regarding a specified Level Two Conference and any appeals for a Level Three Conference. You assert the submitted information is excepted from disclosure under section 552.114 of the Government Code and the Family Educational Rights and Privacy Act ("FERPA"). We reviewed the information you submitted and considered your claims.

Initially, we note that all of the submitted documents are identical to information that was the subject of a previous ruling from this office. In Open Records Letter No. 2003-7430 (2003), we concluded that the District must withhold certain information under FERPA. It appears that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, and therefore, we conclude that the District must withhold or release the submitted documents in accordance with Open Records Letter No. 2003-7430 (2003).¹ See Gov't Code § 552.301(f); Open Records Decision

¹The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

No. 673 (2001). With regard to the remaining information requested in this instance that was not the subject of Open Records Letter No. 2003-7430 (2003), namely the submitted audiotapes, we will address your arguments.

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). 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.² 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). 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 such information to this office for consideration; therefore, we will address your arguments under FERPA.

In this instance, the District maintains the submitted audiotapes, which directly relates to students. Therefore, this information constitutes 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). Here, because the requestor knows the identity of the parent of a District student who is identified in the submitted audiotapes, we find that only withholding student identifying information would not suffice to protect

² Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions of other statutes such as FERPA.

the identity of the students at issue. Therefore, we conclude that the District must withhold the submitted audiotapes, in their entirety, under section 552.114 of the Government Code and 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).

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 that reads "Christen Sorrell".

Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/seg

Ref: ID# 189826

Enc: Submitted documents

c: Mr. R. G. Harrell
548 Oak Grove Lane
Coppell, Texas 75019
(w/o enclosures)