



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2003

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

OR2003-7890

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190433.

The Coppell Independent School District (the "district"), which you represent, received a request for the following information:

- Any and all documents and/or communications relating to any official complaints made by parents, students, and/or teachers concerning Coppell boys basketball head coach Brad Chasteen.
- Any and all documents and/or communications relating to hearings concerning alleged abusive behavior concerning coach Brad Chasteen.
- Any and all documents and/or communications relating to any disciplinary action taken against coach Brad Chasteen for any reason while employed by [the district].
- Any and all documents and/or communications filed with the district by [a named parent] concerning alleged abusive behavior from coach Brad Chasteen toward [a named student] and other members of the 2002-03 Coppell boys basketball team.

You state that some responsive information has been released to the requestor. You claim, however, that portions of the submitted information are excepted from disclosure under sections 552.101 and 552.114 of the Government Code, and under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the

United States Code. We have considered the exceptions you claim and reviewed the submitted information.

As a preliminary matter, we note that one of the submitted documents was created after the date the district received the present request. Information created after the date the district received the present request is not responsive to the request and need not be released. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ dismissed) (Public Information Act does not require governmental body to disclose information that did not exist at the time the request was received); Open Records Decision No. 452 at 3 (1986). With respect to the remainder of the submitted information, we address your claimed exceptions to disclosure.

Section 552.101 of the Government Code exempts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. 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). Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 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 Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov’t Code § 552.026. “Education records” under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

Section 552.114(a) of the Government Code exempts from disclosure “information in a student record at an educational institution funded wholly or partly by state revenue.” This office generally has treated “student record” information under section 552.114(a) as the equivalent of “education record” information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995). FERPA protects information to the extent “reasonable and necessary to avoid personally identifying a particular student,” or “one or both parents of such a student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978).

In Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from public disclosure information that is protected by

FERPA and excepted from required public disclosure by sections 552.026 and 552.101 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 of the Government Code 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. *See* Open Records Decision No. 634 at 6-8 (1995). In this instance, you have submitted information that you contend is confidential under FERPA. Accordingly, we will address your claim.

You state that the documents submitted as Exhibits B, C, and F, and the tape recordings submitted as Exhibits D and E, contain personally identifiable information of district students that is confidential under FERPA. We agree that the information in Exhibit F and most of the information in Exhibit B consists of education records of current or former district students, and that the information you have highlighted in these records reveals the identities of students. Thus, we agree that most of the information you have highlighted in Exhibit F and most of the information you have highlighted in Exhibit B is confidential under FERPA as personally identifiable information contained in student education records and must be withheld. We have also marked a small amount of additional information in Exhibit B that must be withheld under FERPA. We note, however, that some of the documents in Exhibit B are not education records of current or former district students. Accordingly, this information is not subject to FERPA and, consequently, may not be withheld as confidential information on that basis. We have marked the information in Exhibit B that may not be withheld pursuant to FERPA.

Upon review, we further agree that the tape recordings in Exhibits D and E, and most of the documents in Exhibit C, consist of education records of current or former district students. You indicate that Exhibits C, D, and E pertain to district students whose identities are known to this requestor. Thus, you contend that only withholding student identifying information from Exhibits C, D, and E would not suffice to protect the students' privacy. Accordingly, you seek to withhold Exhibits C, D, and E under FERPA in their entirety. Based on your representations and our review, we agree that the district must withhold the tape recordings in Exhibits D and E in their entirety under FERPA. Furthermore, we agree that the information in Exhibit C must generally be withheld in its entirety under FERPA. We note, however, that some of the documents in Exhibit C are not education records of current or former district students. Accordingly, this information is not subject to FERPA and, consequently, may not be withheld as confidential information on that basis. We have marked the information in Exhibit C that may not be withheld pursuant to FERPA.

Next, with respect to information in Exhibit B that is not confidential under FERPA, we note that e-mail addresses of individuals contained in Exhibit B may be excepted from disclosure under section 552.137 of the Government Code. Section 552.137 of the Government Code provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Act of June 2, 2003, 78th Leg., R.S., ch. 1089, § 1, 2003 Tex. Sess. Law Serv. 3124 (to be codified as amendment to Gov't Code § 552.137). Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address or Uniform Resource Locator, or the general e-mail address of a business. E-mail addresses within the scope of section 552.137(c) are also not excepted from disclosure under section 552.137. We find that the e-mail addresses in the submitted information are within the scope of section 552.137(a). Unless the district has received affirmative consent to disclose these e-mail addresses, the department must withhold the marked e-mail addresses under section 552.137 of the Government Code.

We also note that portions of the information in Exhibit B that you do not seek to withhold under FERPA may be excepted from disclosure under 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 elect to keep this information confidential pursuant to section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who elected to keep information confidential pursuant to section 552.024 prior to the date on which the request for this information was made. The records in Exhibit B contain information about Brad Chasteen that is within the scope of section 552.117(a)(1). Thus, if Brad Chasteen timely elected to keep the information confidential, the district must withhold the information we have marked in Exhibit B pursuant to section 552.117(a)(1) of the Government Code. If he did not timely elect to keep the information confidential, however, the district may not withhold this information under section 552.117(a)(1) of the Government Code.

In summary, we have marked the information in Exhibits B and C that is not confidential under FERPA. The district must withhold the remainder of the information you have highlighted in Exhibit B under FERPA, and must withhold the remainder of Exhibit C under FERPA in its entirety. We have also marked a small amount of additional information in Exhibit B that must be withheld under FERPA. The district must withhold the highlighted information in Exhibit F under FERPA. The district must withhold the tape recordings submitted as Exhibits D and E in their entirety under FERPA. With respect to the information in Exhibit B that is not confidential under FERPA, we have marked e-mail addresses that must be withheld under section 552.137 of the Government Code, unless the district has received affirmative consent to release them. We have also marked information in Exhibit B that must be withheld under section 552.117(a)(1) of the Government Code, provided the employee at issue timely elected to keep the information confidential. 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# 190433

Enc: Submitted documents

c: Mr. Brandon George
Dallas Morning News
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(w/o enclosures)