



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2004

Ms. Debbie Harris
Lamar Consolidated Independent School District
3911 Avenue I
Rosenberg, Texas 77471

OR2004-4067

Dear Ms. Harris:

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#201807.

The Lamar Consolidated Independent School District (the "district") received a request for information related to disciplinary actions taken by the district against certain students for violation of rules associated with computer usage on campus, including all e-mails to and from a named campus for a specific time period. You advise us that the district has released some of the requested information. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts 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 id.* § 1232g(b)(1). Section 552.114 of the Government Code provides a similar prohibition against public release of student records from an educational institution funded wholly or in part by state

funds. "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. 20 U.S.C. § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990); *see* Gov't Code § 552.026 (providing that Public Information Act only requires release of information from education records in conformity with FERPA). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). Further, information that does not directly identify a student but would nevertheless make a student's identity easily traceable must also be withheld. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments making identity of student easily traceable through handwriting, style of expression, or particular incidents related in comments protected under FERPA).

We have reviewed the submitted documents and agree that they constitute education records. Therefore, pursuant to section 552.101 of the Government Code and FERPA, you must withhold all information that identifies particular students. *See* Open Records Decision No. 634 (1995) (concluding that educational agency or institution may withhold information protected by FERPA without necessity of requesting an attorney general decision as to those exceptions). For your reference, we have marked the types of information that personally identify or tend to identify particular students. As you claim no other exceptions for the remaining information and it is not otherwise confidential by law, it must be released.

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 black ink that reads "Cary Grace". The signature is written in a cursive style and is positioned above the typed name and title.

Cary Grace
Assistant Attorney General
Open Records Division

ECG/krl

Ref: ID# 201807

Enc. Submitted documents

c: Mr. Gary W. Gates, Jr.
2205 Avenue I #117
Rosenberg, Texas 77471
(w/o enclosures)