



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 22, 2005

Mr. Stephen E. Dubner
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR2005-05542

Dear Mr. Dubner:

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# 229630.

The Terrell Independent School District ("TISD"), which you represent, received a request for all information relating to an incident involving the requestor's child. You inform us that TISD will release some of the requested information and will withhold identifying information of students other than the requestor's child. *See* Open Records Decision No. 634 (1995) (concluding that educational agency or institution may withhold information protected by Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and sections 552.026 and 552.114 of the Government Code without necessity of requesting attorney general decision as to those exceptions). You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. 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). "Education records" are 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).

Under FERPA, a student's parents or guardians have an affirmative right of access to their child's education records. 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. Thus, the requestor, as a parent of the child at issue in the submitted records, has a right of access to those records under FERPA. Sections 552.101, 552.102, and 552.135 are state statutes that are preempted by federal law to the extent they conflict with that federal law. *See, e.g., Equal Employment Opportunity Comm'n v. City of Orange*, 905 F. Supp 381, 382 (E.D. Tex. 1995); *see also* Open Records Decision No. 431 (1985) (information subject to right of access under FERPA may not be withheld pursuant to statutory predecessor to section 552.103). Because FERPA, as federal law, provides the requestor with an affirmative right of access to the submitted information, we conclude that the district may not withhold any portion of the submitted information under sections 552.101, 552.102, or 552.135 of the Government Code. Thus the district must allow access to the information at issue with only the names of the other district students redacted. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.12(a) (parent's right of access does not extend to information regarding other students); *See also* Open Records Decision Nos. 332 (1982), 206 (1978) (information must be withheld under FERPA only to extent reasonable and necessary to avoid personally identifying particular student).

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll

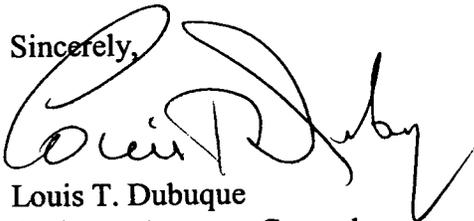
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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); *Tex. 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,



Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/seg

Ref: ID#229630

Enc. Submitted documents

c: requestor
(w/o enclosures)