ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 9, 2005

Ms. Ellen B. Huchital
McGinnis, Lochridge & Kilgore, L.L.P.
3200 One Houston Center
1221 McKinney Street
Houston, Texas 77010

OR2005-08229

Dear Ms. Huchital:

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# 229840.

The Conroe Independent School District (the "CISD") received a request for names of individuals who had filed complaints against the requestor. You claim that the submitted information is excepted from disclosure under the Family Educational Rights and Privacy Act of 1974 ("FERPA") and sections 552.114 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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. 20 U.S.C. § 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 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). This includes information that directly identifies a student or parent, as well as 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). Having reviewed the responsive information, we have marked the information that must be redacted pursuant to FERPA as well as section 552.114. CISD must release the remaining information.[1]

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

---

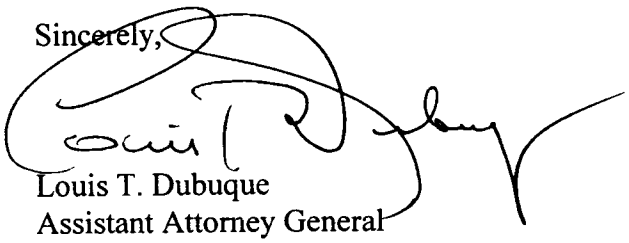
[1]As our ruling on this issue is dispositive, we need not address your remaining argument against disclosure.

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 Office of the Attorney General 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/jh

Ref: ID# 231914

Enc. Submitted documents

c: Mr. Brian Martinez
c/o Ms. Ellen B. Huchital
McGinnis, Lochridge & Kilgore, L.L.P.
3200 One Houston Center
1221 McKinney Street
Houston, Texas 77010
(w/o enclosures)