



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 9, 2006

Mr. R. Kevin Rhyne
Henslee, Fowler, Hepworth & Schwartz, L.L.P.
110 North College Avenue, Suite 1116
Tyler, Texas 75702

OR2006-00283

Dear Mr. Rhyne:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 239876.

The Troup Independent School District (the "district"), which you represent, received a request for a copy of a statement made by a student regarding a former district employee. You argue that the submitted information consists of "education records" that are not subject to disclosure under sections 552.026, 552.101, and 552.114 of the Government Code and the federal Family Educational Rights and Privacy Act. We have considered the exceptions you claim and reviewed the submitted information.

The Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code, 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. *Id.* § 1232g(a)(4)(A). You state that the submitted information is an education record for purposes of FERPA and that it is maintained by the district, an educational institution.

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. 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.

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 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 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.

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). Upon review, we conclude that the submitted information consists of an education record that contains information identifying a student. Thus, the information in the submitted document that personally identifies the student is generally confidential under FERPA. The district states that "due to the publicity of the events, it is believed that the statement itself would make the student's identity easily traceable." Additionally, the submitted statement was hand-written by a student. For purposes of FERPA, students' handwritten letters constitute "education records" in that they contain information about identifiable students. See Open Records Decision No. 224 (1979) (student's handwritten comments that would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in comments protected under FERPA). Thus, we agree that the submitted handwritten statement must be withheld in its entirety pursuant to sections 552.026 and 552.114 of the Government Code.

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); *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. 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,



Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/segh

Ref: ID# 239876

Enc. Submitted documents

c: Mr. Pearlie Henderson
Chairman of the Redress
NAACP
c/o Henslee, Fowler, Hepworth & Schwartz, L.L.P.
110 North College Avenue, Suite 1116
Tyler, Texas 75702
(w/o enclosures)