



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 12, 2006

Mr. Mark C. Goulet
Walsh, Anderson, Brown, Schulze, & Aldridge, P.C.
P. O. Box 2156
Austin, Texas 78768

OR2006-00426

Dear Mr. Goulet:

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# 242410.

The Alpine Independent School District (the "district"), which you represent, received a request for the audiotape of a specific closed meeting of the district board of trustees. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes, such as section 551.104 of the Government Code. Section 551.104(c), a provision of the Open Meetings Act, provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Gov't Code § 551.104(c). As you acknowledge, the district is not required to submit the certified agenda or tape recording of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code). Thus, generally, such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988).

However, in this instance you inform us that the recording at issue relates to a student/ parent grievance. Therefore, we believe that the recording is an "education record" for purposes of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("FERPA"). See Gov't Code § 552.026 (expressly incorporating the provisions of FERPA into the Act). 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). "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. *Id.* § 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) (granting parents affirmative right of access to their child's education records). As a state statute, section 551.104 of the Government Code cannot abrogate that right. 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) (FERPA prevails when in conflict with state law). In this instance, we understand that the requestor is an attorney who represents a student, and her parents, to whom the district provides education services. Thus, you must allow access to this student's education records by the requestor upon receipt of a proper written consent as required by section 1232g(b)(2). Such education records include those portions of the recording at issue that directly relate to this student. See *Belanger v. Nashua, New Hampshire, Sch. Dist.*, 856 F. Supp. 40 (D.N.H. 1994) (district records relating to student's juvenile court proceedings were "education records" which parent was entitled to access irrespective of state confidentiality law). Therefore, the district must provide the requestor with access to the requested audiotape regarding the student/ parent grievance.

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,



Candice M. De La Garza
Assistant Attorney General
Open Records Division

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Ref: ID# 242410

Enc. Submitted documents

c: Ms. Bonnie Dale Bratton
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(w/o enclosures)