



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2006

Ms. Christine Badillo
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2006-01212

Dear Ms. Badillo:

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# 241667.

The Lake Travis Independent School District (the "district"), whom you represent, received eighteen requests from the same requestor for e-mail communications of named individuals on specific dates. You state that some responsive documents have been made available to the requestor. We note you have also redacted social security numbers.¹ You claim that the remaining requested information is excepted from disclosure under sections 552.107, 552.114, 552.136, and 552.137 of the Government Code and privileged under rule 503 of the Texas Rules of Evidence. We have considered your arguments and reviewed the submitted information.

Initially, we must address the district's obligations under the Act. Sections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [Act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not

¹ See Gov't Code § 552.147(b) (governmental body may redact social security number from public release without necessity of requesting decision from this office under the Act).

been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Gov't Code § 552.301(a), (b). We note that the district received all of the requests for information on November 11, 2005. You did not request a decision from this office until November 30, 2005. Consequently, you failed to request a decision within the ten business day period mandated by section 552.301(b) of the Government Code.

Because the request for a decision was not timely submitted, the requested information is presumed to be public information. Gov't Code § 552.302. In order to overcome the presumption that the requested information is public information, a governmental body must provide a compelling reason why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). Normally, a compelling reason exists when third-party interests are at stake, or when information is confidential under other law. *See* Open Records Decision No. 150 (1977). Although you assert that the submitted information is excepted from disclosure pursuant to section 552.107 of the Government Code this is a discretionary exception and is not a compelling reason to overcome the presumption that the information is public. *See* Open Records Decision No. 676 at 12 (2002) (harm to governmental body's interests under section 552.107 not compelling reason for non-disclosure), *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Additionally, this office has determined that discovery privileges, such as rule 503 of the Texas Rules of Evidence, do not constitute compelling reasons to overcome the presumption of openness under section 552.302. *See, e.g.*, Open Records Decision No. 676 at 11 (2002) (assertion of rule 503 does not demonstrate "compelling reason" under section 552.302 to prohibit governmental body's release of information). Therefore, none of the submitted information may be withheld from disclosure under section 552.107 of the Government Code or rule 503 of the Texas Rules of Evidence. However, sections 552.114, 552.136, and 552.137 can provide compelling reasons to overcome the presumption of openness, so we will address your arguments under these exceptions.

You argue that student identifying information in the submitted documents is excepted from disclosure pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 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). Section 552.026 of the Government Code provides that “information contained in education records of an educational agency or institution” may only be released under the Act in accordance with FERPA.

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. *See* Open Records Decision No. 634 at 6-8 (1995). In this instance, you have submitted this information for our review. Accordingly, we will address your claim.

Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student” or “one or both parents of such a student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978). Such information includes information that directly identifies a student as well as information that, if released, would allow the student’s identity to be easily traced. *See* Open Records Decision No. 224 (1979). You inform us that portions of the remaining submitted information identifies students of the district. The information you have marked, in addition to the information we have marked, must be withheld under section 552.114 and FERPA.

You raise section 552.136 for budget code numbers you have marked in Tabs 13 and 17. Section 552.136 of the Government Code states that “[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.” Gov’t Code § 552.136. Having reviewed the information at issue, we find that you have failed to demonstrate that the information you have marked constitutes access device numbers for purposes of section 552.136. Thus, this information may not be withheld under section 552.136.

Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov’t Code § 552.137(a)-(c). We note that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body. The e-mail addresses at issue are generally not of the type specifically excluded by section 552.137(c). Therefore, unless the relevant individual has consented to its release, we determine that the district must withhold most of

Code. The submitted e-mail addresses of those with whom the district has a contractual relationship are not excepted under section 552.137. We have marked information that was incorrectly bracketed and may not be withheld under section 552.137.

In summary, the marked information must be withheld under section 552.114 and FERPA. In addition, except for the e-mail addresses of those with whom the district has a contractual relationship, the district must withhold the e-mail addresses you have bracketed pursuant to section 552.137 of the Government Code. The remaining submitted information 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, 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).

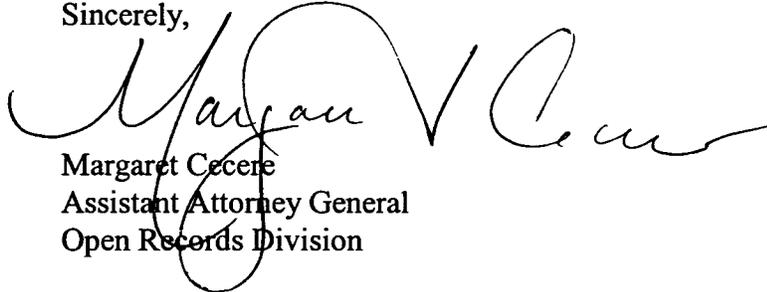
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

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,

A handwritten signature in cursive script, appearing to read "Margaret Cecere". The signature is written in black ink and is positioned above the typed name and title.

Margaret Cecere
Assistant Attorney General
Open Records Division

MC/segh

Ref: ID# 241667

Enc. Submitted documents

c: Mr. David Lovelace
103 Galaxy
Austin, Texas 78734
(w/o enclosures)