



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 13, 2006

Ms. Jennifer S. Riggs  
Riggs & Aleshire  
700 Lavaca, Suite 920  
Austin, Texas 78701

OR2006-03716

Dear Ms. Riggs:

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# 246387.

The Carroll Independent School District (the "district"), which you represent, received a request for "a copy of all transcripts and photos of blog sites of [d strict] students under investigation." You argue that the submitted information consists of "education records" that are not subject to disclosure under sections 552.026 and 552.114 of the Government Code. In the alternative, you claim that portions of the submitted information are excepted from disclosure under section 552.137 of the Government Code. We have considered your arguments 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 all of the submitted documents contain information directly related to a student and are maintained by the district in student records. Therefore, in the

possession of the district, the submitted information constitutes education records subject to FERPA.

Section 552.114 of the Government Code exempts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 of the Government Code 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.

Gov't Code § 552.026. 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 of the Government Code<sup>1</sup> 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. In this instance, you have redacted some of the submitted information pursuant to FERPA. However, you ask this office to determine if FERPA applies to any of the remaining information. Therefore, we will consider whether any of the remaining information is protected by 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). Upon review of the submitted information, we agree that the information you have marked may reveal or tend to reveal information about a student and must be withheld pursuant to FERPA. However, we find that none of the remaining information identifies students. Thus, this information is not confidential under FERPA, and the district may not withhold it on that ground.

You also assert section 552.137 of the Government Code for some of the submitted information. Under this provision, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See Gov't Code* § 552.137(b). You do not inform us that the individuals to whom the e-mail addresses belong have affirmatively

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<sup>1</sup>Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes.

consented to the release of the e-mail addresses contained in the submitted materials. The district must, therefore, withhold the e-mail addresses it has marked under section 552.137.

Finally, we note that some of the materials at issue may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, the district must withhold the information it has marked under FERPA. The marked email addresses must be withheld under section 552.137 of the Government Code. The remaining information must be released in accordance with copyright law.

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/krl

Ref: ID# 246387

Enc. Submitted documents

c: Mr. Lance Conrad  
Facsimile: (817) 877-5040  
(w/o enclosures)