



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 28, 2006

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

OR2006-04329

Dear Ms. Maresh:

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# 251664.

The Troy Independent School District (the "district"), which you represent, received a request for an audiotape of a closed session of the district's board of trustees in which the board considered a complaint regarding discipline of the requestor's child.<sup>1</sup> You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered your arguments.

We initially note that the Act expressly incorporates the provisions of the federal Family Educational Rights and Privacy Act of 1974, section 1232g of title 20 of the United States Code ("FERPA"). *See* Gov't Code § 552.026. Under FERPA, "education records" are those records, files, documents, and other materials that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

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<sup>1</sup>You acknowledge that the requestor also seeks access to other information. You inform us that the district is responding to the rest of his request.

20 U.S.C. § 1232g(a)(4)(A). We believe that the requested audiotape constitutes an "education record" for purposes of FERPA. *See* Open Records Decision No. 462 at 15 (1987).

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). Therefore, the district must generally withhold student-identifying information under FERPA. In this instance, however, you inform us that the requestor is a parent of a student to whom the district provides education services. FERPA gives parents the right to inspect education records to the extent that the records relate to the parents' own children. *See id.* § 1232g(a)(1)(A) (granting parents affirmative right of access to their child's education records).

We note, however, that section 551.104(c) of the Government Code, 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). Thus, such information generally cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988).<sup>2</sup> Nevertheless, if the requested audiotape pertains to matters involving a district student, FERPA requires that the student's parents be given a right of access to the tape. In support, we note that this office consulted with the Family Policy & Regulations Office of the United States Department of Education (the "DOE") regarding a similar request. The DOE advised as follows:

FERPA does not require that education records relate exclusively to a student or be created for any particular purpose, only that they contain information that is directly related to the student. Furthermore, the definition of "education records" is "records, files, documents and other materials" that contain information directly related to a student and there is no support in the statute that the term "education records" is limited to those that have been placed in a designated file. This was reinforced in *Belanger v. Nashua, New Hampshire School District*, 856 F. Supp. 40, 48-50 (D.N.H. 1994), where a federal court held that records pertaining to a student's juvenile court proceedings that were maintained by the school district's attorney were "education records" under FERPA. In so holding, the *Belanger* court stated that both the plain language of the statutory definition of "education records" and the legislative history of the Buckley-Pell amendment made clear that "education records" included any documents pertaining to a student that are maintained by the institution.

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<sup>2</sup>This office lacks the authority to review a certified agenda or executive session tape in connection with the open records rulings process. *See* Open Records Decision No. 495 at 4.

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In sum, and to more specifically answer your question, under FERPA, the recording you referenced is an "education record" under FERPA.

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We are not familiar with the state law you noted and, therefore, do not know if the law conflict[s] with FERPA. However, if the state law prohibited the school district from providing a parent with access to the education records of his or her child, that would constitute a conflict. If an educational agency or institution wishes to continue to receive federal education funds, they must comply with FERPA.

Letter advisement from Ellen Campbell, Family Compliance Office, U.S. Department of Education to Robert Patterson, Open Records Division, Office of the Texas Attorney General (April 9, 2001).

In this instance, because the requestor is the parent of the district student in question, we conclude that FERPA grants the requestor a right of access to the requested closed-session audiotape, to the extent that the audiotape concerns the requestor's child. 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). We understand you to state that the board tape-recorded only that portion of its closed session that concerned the requestor's child. Consequently, to comply with FERPA, the district must provide the requestor with access to the requested audiotape. *See* Open Records Decision No. 152 (1977) (educational institution must provide copy of education record to qualified individuals).<sup>3</sup> We note that FERPA does not entitle a parent to copy an education record to which the parent has a right of access, unless "circumstances effectively prevent the parent . . . from exercising the right to inspect and review the student's education records[.]" *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.10(d).

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

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<sup>3</sup>If you have questions as to the applicability of FERPA to the information at issue, you may wish to consult with the DOE at 202-260-3887.

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).

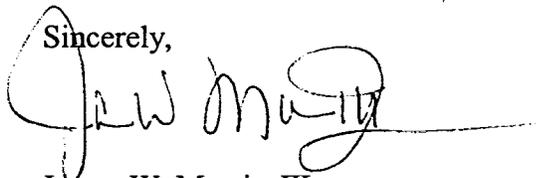
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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,



James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 251664

c: Mr. CHRIS GOTT  
c/o Marquette Maresh  
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