ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2006

Mr. Gary Allmon Grimes
Schuerenberg & Grimes
120 West Main, Suite 201
Mesquite, Texas 75149

OR2006-05202

Dear Mr. Grimes:

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# 254092.

The Mesquite Independent School District (the "district"), which you represent, received a request for information relating to the requestor's child. You state some of the requested information either has been or will be released. You have submitted information that you claim is excepted from disclosure under sections 552.101, 552.111, and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. You raise section 552.101 in conjunction with the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. 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); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Section 552.026 of the Government Code incorporates FERPA into the Act. *See* Gov't Code § 552.026 (Act does not require release of information contained in education records of educational agency or institution except in conformity with FERPA).

"Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). Generally, FERPA requires that information be withheld from the public only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978).

Section 552.114 of the Government Code excepts from public disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information under FERPA. *See* Open Records Decision No. 634 at 5 (1995).[1]

We have reviewed the submitted information and conclude that the information constitutes education records that are confidential under FERPA. Therefore, this information may only be released in accordance with the federal law. We note that the requestor is a parent of one of the students to whom the submitted information pertains. FERPA gives parents the right to inspect education records, to the extent that the records relate to the parents' own child. *See* 20 U.S.C. § 1232g(a)(1)(A) (granting parents affirmative right of access to their child's education records). Therefore, the requestor has a right of access under FERPA to most of the submitted information. *Id.* However, those portions of the submitted information that personally identify students other than the requestor's child must be withheld from the requestor under FERPA. *Id.*[2] We have marked that information.

You also ask whether the district may withhold, under section 552.111 of the Government Code, some of the information to which the requestor has a right of access under FERPA. You assert that the information in question is contained in intra-agency memoranda.[3] We note that, as a state statute, section 552.111 is preempted by federal law to the extent that the state law conflicts with the federal law. *See, e.g., Equal Employment Opportunity Comm'n*

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[1]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 under sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions and (2) a state-funded educational agency or institution 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).

[2]Section 1232g(a)(1)(A) provides in part that "[i]f any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material." 20 U.S.C. § 1232g(a)(1)(A); *see also* 34 C.F.R. § 99.12.

[3]Section 552.111 excepts from public disclosure "[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency[.]" Gov't Code § 552.111.

v. City of Orange, Texas, 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). Therefore, the district may not withhold any information to which the requestor has a right of access under FERPA on the basis of its claim under section 552.111 of the Government Code.

In summary, the marked information that relates to students other than the requestor's child must be withheld under FERPA. The rest of the submitted information must be released to this requestor.

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).

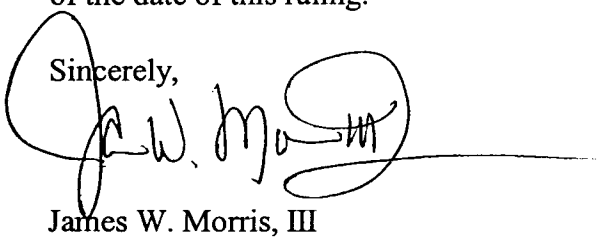
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



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

JWM/sdk

Ref: ID# 254092

Enc: Submitted documents

c: Ms. Dahlia Weber
2701 Ash Creek
Mesquite, Texas 75181
(w/o enclosures)