



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 31, 2006

Ms. Sandra D. Carpenter
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P. O. Box 168046
Irving, Texas 75016-8046

OR2006-05688

Dear Ms. Carpenter:

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# 250247.

The Wylie Independent School District (the "district"), which you represent, received a request for a copy of a video of a specified accident. You claim that the requested information is excepted from disclosure under section 552.114 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code* § 552.304 (providing for submission of public comments).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. The Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, governs the availability of student records held by educational agencies or institutions that receive federal funds under programs administered by the federal government. 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). Under FERPA, "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. *See* 20 U.S.C. § 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. This office generally applies the same analysis under section 552.114 of the Government Code and FERPA. Open Records Decision No. 539 (1990).

Generally, information must be withheld from required public disclosure under FERPA to the extent "reasonable and necessary to avoid personally identifying a particular student." See Open Records Decision Nos. 332 (a982), 206 (1978). Such information includes both 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) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related).

The submitted information is a compact disc of the requested videotape. You explain that this disc is a video of the requestor's daughter's accident and contains identifiable images of other students who were present in the hallway and on the stairs at the time of the accident. You argue that FERPA applies to all of the student images. However, the Family Policy Compliance Office of the Department of Education has determined that with regard to a video of a specified incident containing images of multiple students, the video is only a part of the education records of students directly involved in the incident. In this instance, the daughter of the requestor was directly involved in the accident at issue and thus the video is considered her education record. However, because none of the other students in the video were directly involved in the accident, we determine that the video is not directly related to any of these other students and thus is not their education records. We note that FERPA grants the parents of a student a right of access to the educational records of that student. See 20 U.S.C. § 1232g(a)(1)(A). Thus, the requestor has a right of access to the entire compact disc. Accordingly, the district must release the submitted compact disc to the requestor.¹

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

¹If you have questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office, whose address and telephone number follow:

Family Policy Compliance Office
United States Department of Education
600 Independence Avenue S.W.
Washington, D.C. 20202-4605
(202) 260-3887

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,



Jaime L. Flores
Assistant Attorney General
Open Records Division

JLF/krl

Ref: ID# 250247

Enc. Submitted documents

c: Ms. Sherry Salvatore
711 Horizon Drive
Murphy, Texas 75094
(w/o enclosures)