



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 12, 2006

Mr. Jerry R. Wallace
Delgado, Acosta, Braden & Jones, P.C.
221 North Kansas Street, Suite 2000
El Paso, Texas 79901

OR2006-06158

Dear Mr. Wallace:

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# 251605.

The Ysleta Independent School District (the "district"), which you represent, received a request for "a copy of final reports of the audit(s) performed by the district's Internal Audit Department from July 2005 to March 2006, and a list of audits in progress." You state that you have released some of the requested information. You claim that a portion of the submitted information is excepted from disclosure under sections 552.026, 552.101, 552.114, 552.117, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Gov't Code § 552.101. Section 552.101 encompasses the 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). "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); *see* Gov't Code § 552.026 (incorporating provisions of FERPA into the Act).

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). 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). 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). We have marked the student-identifying information that is subject to FERPA and must be withheld under section 552.101 on that basis.

Section 552.117 of the Government Code excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). You state that the employee at issue elected to keep her home address and social security number confidential. We note that the information at issue does not include this employee's social security number. Furthermore, we note that you have not submitted a copy of the form in which the employee at issue elected to keep this information confidential. Accordingly, the district may withhold the information we have marked under section 552.117 on behalf of this employee only if she elected, pursuant to section 552.024, to keep her home address confidential prior to the date on which the request for this information was made. The district may not withhold the marked information under section 552.117 if the employee at issue did not make a timely election to keep this information confidential.

We note that some of the remaining information is excepted from release under section 552.130 of the Government Code.¹ Section provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

¹The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a)(1), (2). Therefore, the district must withhold the information we have marked under section 552.130.

You claim that a portion of the remaining information is excepted from disclosure under section 552.136 of the Government Code, which provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding 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.

Id. § 552.136. The district must withhold account numbers that we have marked pursuant to section 552.136 of the Government Code.²

In summary, the district must withhold the information we have marked pursuant to FERPA. If the employee at issue timely elected to keep her home address confidential, the district must withhold this information under section 552.117 of the Government Code. The district must withhold the information we have marked under sections 552.130 and 552.136 of the Government Code. The remaining information must be released to the 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

²As our ruling is dispositive, we need not address your remaining argument for this information.

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).

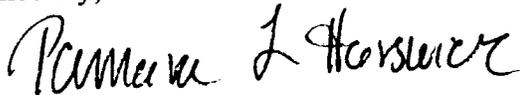
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/eb

Ref: ID# 251605

Enc. Submitted documents

c: Ms. Brenda DeAnda
4140 Rio Bravo
El Paso, Texas 79902
(w/o enclosures)