



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2006

Ms. Laura C. Rodriguez  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P. O. Box 460606  
San Antonio, Texas 78246-0606

OR2006-07492

Dear Ms. Rodriguez:

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# 253837.

The Big Sandy Independent School District (the "district"), which you represent, received a request for six categories of information related to district policies, complaints or grievances filed by a named individual, and certain communications. You state that some responsive information has been released to the requestor. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the information at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g(b)(1) of title 20 of the United States Code. Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. See Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides:

[t]his 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. 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). 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 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, however, you have submitted a copy of the requested information to this office for consideration. Therefore, we will consider whether this information is subject to section 552.101 and 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). 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. You inform us that the submitted records identify students of the district and that release of any of the information at issue "would make the identity of the students involved easily traceable[.]" Based on your representations and our review of the submitted information, we determine that withholding only portions of these education records would not suffice to avoid the release of personally identifiable information as mandated by FERPA. Accordingly, these education records are confidential in their entirety under FERPA.

We note, however, that FERPA specifically provides for the release of "education records" to "school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests." 20 U.S.C. § 1232g(b)(1)(A). Thus, it is for the district to decide whether the requestor, who represents several teachers, has a "legitimate educational interest" in the education records at issue. *See* 34 C.F.R. § 99.31(a)(1). Additionally, we note that the district is permitted but not required to disclose the education records to a

requesting teacher who is seeking the records for a "legitimate educational interest."<sup>1</sup> See 34 C.F.R. § 99.31(b).

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).

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<sup>1</sup>If 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 Family Policy Compliance Office, whose contact information follows:

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

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,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/eb

Ref: ID# 253837

Enc. Submitted documents

c: Ms. Leila C. Feldman  
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(w/o enclosures)