



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 18, 2006

Mr. William C. Bednar
Law Office of William C. Bednar
712 West 14th Street, Suite A
Austin, Texas 78701-1708

OR2006-07701

Dear Mr. Bednar:

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# 255439.

The Wylie Independent School District (the "district"), which you represent, received five requests "to view the tapes of A & B lunch on Thursday, May 4, 2006."¹ 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.

Initially, we must address the district's obligations under the Act. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You failed to submit to this office copies of the written requests for information. Thus, the district failed to comply with the procedural requirements mandated by section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption

¹As you failed to submit copies of the written requests for information, we take our description from your brief.

that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977). Because section 552.114 of the Government Code can provide a compelling reason to withhold information, we will address this exception.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Gov’t Code § 552.101. This section encompasses information protected by other statutes such as the Family Educational Rights and Privacy Act of 1974 (“FERPA”). *See* 20 U.S.C. § 1232g(b)(1). 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).

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. *See* Open Records Decision No. 634 at 6-8 (1995). In this instance, you have submitted information that you contend is confidential under FERPA. Accordingly, we will address your claim.

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 DVD of the requested videotape. You explain that this disc contains the surveillance recordings "from about 11:15 AM to 12:56 PM on May 4, 2006" from two different cameras that are located within the cafeteria. Thus, the disc contains images of those involved in an altercation and those who were not involved. You state that FERPA applies to all of the student images. However, the Family Policy Compliance Office of the Department of Education ("DOE") has determined that videotapes of this type do not constitute the education records of students who did not participate in the altercation. Thus, FERPA does not apply to the images of the students who did not participate in the altercation. The DOE has, however, determined that the images of the students involved in the altercation do constitute the education records of those students. Thus, FERPA does apply to the students involved in the altercation. Further, DOE has determined that the students involved in the altercation are directly related to each other because of the altercation.

In this instance, the requestors are students and the parents of students who were involved in the altercation at issue. Thus the students' images and those of the other participants to the altercation are considered their educational records that are directly related to each other. We note that FERPA grants both a student and 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, since the other students involved in the altercation are directly related to the requestors or the requestors's children, the requestors have a right of access to the entire DVD. Accordingly, the district must release the submitted DVD to the requestors.²

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

²If 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

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,



Anne Prentice
Assistant Attorney General
Open Records Division

AP/sdk

Ref: ID# 255439

Enc. Submitted documents

c: Mr. Tony B.
138 CR 127
Tuscola, Texas 79562
(w/o enclosures)

Ms. Becky J.
967 Bacacita Farms Road
Abilene, Texas 79602
(w/o enclosures)

Mr. Jacob J.
967 Bacacita Farms Road
Abilene, Texas 79602
(w/o enclosures)

Ms. Brandi B.
3534 Potosi Road
Abilene, Texas 79602
(w/o enclosures)

Mr. Chance P.
3534 Potosi Road
Abilene, Texas 79602
(w/o enclosures)