ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 20, 2006

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

OR2006-07871

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# 254460.

The Ysleta Independent School District (the "district"), which you represent, received two requests from the same requestor for information relating to certain complaints against a named employee of the district. 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 note that some of the submitted documents, which we have marked, were created after the date on which the request for information was received by the district. Because this information was created after the district's receipt of the request, it is not encompassed by the request. Accordingly, we do not address the availability of this non-responsive information, and the district need not release it in response to the request.

Section 552.114 of the Government Code excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Gov't Code § 552.114. 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. Gov't Code § 552.026. This office generally applies the same analysis under section 552.114 of the Government Code and FERPA. Open Records Decision No. 539 (1990).

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). We have marked information in the submitted documents that may identify students. To the extent that the information we have marked identifies students of the district, such information must be withheld under section 552.114 and FERPA.

We note that a portion of the remaining information may be excepted from disclosure under section 552.117 of the Government Code.[1] Section 552.117(a)(1) excepts from disclosure the current and former 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. Gov't Code § 552.117(a)(1). Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Thus, the district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. Accordingly, if the employee whose information we have marked made a timely election to keep such information confidential, the district must withhold this information under section 552.117(a)(1). The district may not withhold this marked information if this employee did not make such a timely election.

We further note that the remaining information includes e-mail addresses. Section 552.137 of the Government Code excepts from disclosure "an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body" unless the member of the public consents to its release or the e-mail address is of a

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[1]This office will raise mandatory exceptions to disclosure on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). We note, however, section 552.137 does not apply to a government employee's work e-mail address because such an address is not that of the employee as a "member of the public," but is instead the address of the individual as a government employee. Thus, the district may not withhold the submitted e-mail addresses of government employees pursuant to section 552.137. The remaining e-mail addresses, however, do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the individuals to whom these e-mail addresses pertain have affirmatively consented to their release. Accordingly, we conclude that the district must withhold these e-mail addresses, which we have marked, pursuant to section 552.137.

In summary, to the extent that the information we have marked identifies students of the district, such information must be withheld under section 552.114 of the Government Code and FERPA. If the employee at issue made a timely election to keep the information we have marked confidential, the district must withhold this information under section 552.117(a)(1) of the Government Code. The e-mail addresses we have marked must be withheld under section 552.137 of the Government Code. The remaining submitted information must be released to the requestor.[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 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

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[2]We note that the requestor, as the authorized representative of the named employee at issue, has right of access under section 552.023 of the Government Code to information in the submitted documents that would be otherwise be excepted from release under the Act. *See* Gov't Code § 552.023 (providing person or person's authorized representative special right of access, beyond right of general public, to information held by governmental body that relates to person and that is protected from disclosure by laws intended to protect that person's privacy interest). Therefore, if the district receives a future request for this information from an individual without such a right of access, the district should again seek our decision.

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,

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 254460

Enc. Submitted documents

c: Ms. Vicky Crase
Texas Federation of Teachers
3112 Park North Drive
El Paso, Texas 79904
(w/o enclosures)