



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 11, 2006

Ms. Ann Greenberg
Walsh, Anderson, Schulze & Aldridge, P.C.
P.O. Box 2156
Austin, Texas 78768

OR2006-14471

Dear Ms. Greenberg:

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# 266618.

The Lake Travis Independent School District (the "district"), which you represent, received four requests from the same requestor for information pertaining to a complaint filed by the requestor with the Texas Education Agency against the district and a grievance filed by the requestor against the district. You state that the district has released some information to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.103, 552.107, and 552.111 of the Government Code and privileged under Rule 503 of the Texas Rules of Evidence and Rule 192.5 of the Texas Rules of Civil Procedure. We have considered your arguments and reviewed the submitted information. We have also considered comments submitted by the requestor. *See Gov't Code § 552.304 (interested third party may submit comments stating why requested information should or should not be released).*

Initially, we note that recently, the United States Department of Education Family Policy Compliance Office (the "DOE") informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g, does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the

open records ruling process under the Act.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which “personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You have submitted, among other things, unredacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.²

Next, we must address the district’s obligations under the Act. Pursuant to section 552.301(b) of the Government Code, a governmental body must ask for the attorney general’s decision and state the exceptions that apply within ten business days after receiving the request. *See* Gov’t Code § 552.301(a), (b). You inform us that the district received three of the requests for information on September 18, 2006. Accordingly, you were required to submit a request for a ruling from this office by October 2, 2006. Although you contend that the district attempted to mail the request for a ruling on October 2, 2006, you concede that the district failed to add postage to the mail. Consequently, the United States Postal Service returned the district’s letter on October 6, 2006 for lack of postage. You did not hand-deliver the district’s request for a ruling to this office until October 6, 2006. Consequently, we find that the district failed to comply with the procedural requirements of section 552.301 for the information responsive to the requests received by the district on September 18, 2006.³ *See id.* § 552.308 (describing rules for calculating submission dates of documents sent via first class United States mail, common or contract carrier, or interagency mail).

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 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

¹A copy of this letter may be found on the Attorney General’s website at: http://www.oag.state.tx.us/opinopen/og_resources.shtml.

²In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

³You inform our office that information responsive to the fourth request for information, which was received by the district on September 20, 2006, is also responsive to the second request for information received by the district on September 18, 2006.

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).

Although you raise sections 552.103, 552.107, and 552.111 of the Government Code, and Texas Rule of Civil Procedure 192.5 and Texas Rule of Evidence 503, these exceptions and rules are discretionary in nature. They serve only to protect a governmental body's interests and may be waived. As such, they do not constitute compelling reasons to withhold information for purposes of section 552.302. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (2002) (attorney work-product privilege under section 552.111 or rule 192.5 is not compelling reason to withhold information under section 552.302), 676 at 12 (2002) (attorney-client privilege under section 552.107 or rule 503 constitutes compelling reason to withhold information under section 552.302 only if information's release would harm third party), 663 at 5 (1999) (governmental body may waive sections 552.103, 552.107, and 552.111), 470 (1987) (statutory predecessor to section 552.111 is discretionary exception). *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Accordingly, the district may not withhold the submitted information pursuant to sections 552.103, 552.107, or 552.111, or Rule 192.5 or Rule 503. As you raise no further exceptions to disclosure, the remaining submitted information must be released.

In summary, this ruling does not address the applicability of FERPA to the submitted information. Should the district determine that all or portions of the submitted information consists of "education records" subject to FERPA, the district must dispose of that information in accordance with FERPA, rather than the Act. The remaining submitted information must be released.⁴

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

⁴We note that some of the information being released, *i.e.* the requestor's personal e-mail address, is confidential and not subject to release to the general public. However, the requestor in this instance has a special right of access to this information. Gov't Code § 552.023 (person or person's authorized representative has special right of access to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests). Because such information may be confidential with respect to the general public, if the district receives another request for this information from an individual other than this requestor or her representative, the district should again seek our decision.

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,



Lisa V. Cubriel
Assistant Attorney General
Open Records Division

LVC/eb

Ref: ID# 266618

Enc. Submitted documents

c: Ms. Diana Pharr
2204 Westlake Drive
Austin, Texas 78746
(w/o enclosures)