



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 6, 2007

Ms. Amanda M. Bigbee
Henslee Fowler Hepworth & Schwartz, L.L.P.
306 West 7th Street, Suite 1045
Fort Worth, Texas 76102

OR2007-01525

Dear Ms. Bigbee:

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# 273306.

The Carroll Independent School District (the "district"), which you represent, received a request for information relating to communications during a specific time period between the district and district parents regarding any cheerleading issues at Carroll Senior High School. You state that you have provided the requestor with some of the requested information. You claim that a portion of the remaining information is excepted from disclosure under sections 552.117 and 552.137 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

We first note that the submitted information includes education records. The United States Department of Education Family Policy Compliance Office (the "DOE") recently informed this office that the Family Education Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code, 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 purposes of our review in the open

¹ Although you also raise section 552.024 of the Government Code, we note that this section is not an exception to disclosure under the Act. Rather, this section permits an employee of a governmental body to choose whether to allow public access to certain information relating to the employee that is held by the employing governmental body. *See* Gov't Code § 552.024.

records ruling process under the Act.² 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 redacted and 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 application of FERPA to any of the submitted records. Such determinations under FERPA must be made by the education authority in possession of the education records.³ We will, however, address the applicability of your claimed exceptions to the submitted information.

Section 552.117(a)(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024 of the Government Code. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body’s receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Therefore, information may only be withheld under section 552.117(a)(1) on behalf of an employee who made a request for confidentiality under section 552.024 prior to the date of the governmental body’s receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of an employee who did not timely request confidentiality under section 552.024. The district must withhold the information that we have marked under section 552.117(a)(1) if the employee timely requested confidentiality for that information under section 552.024.

We also note that section 552.137 of the Government Code is applicable to some of the requested information. Section 552.137 states in part that “[e]xcept as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.” *Gov’t Code* § 552.137(a). Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the owner of the e-mail address has affirmatively consented to its public disclosure. *See id.* § 552.137(b). The types of e-mail addresses listed in section 552.137(c) may not be withheld under this exception. *See id.* § 552.137(c). Likewise, section 552.137 is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a

²A copy of this letter may be found on the Office of the Attorney General’s website: http://www.oag.state.tx.us/opinopen/og_resources.shtml.

³In 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.

governmental entity maintains for one of its officials or employees. Unless the owners of the e-mail addresses at issue affirmatively consented to their public disclosure, the district must withhold the marked e-mail addresses pursuant to section 552.137.

In summary, the district must withhold the information marked pursuant to sections 552.117 and 552.137. The remaining submitted information must be redacted.

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).

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,

A handwritten signature in black ink, appearing to read "Lori Cobos", written in a cursive style.

Lori A. Cobos
Assistant Attorney General
Open Records Division

LC/eb

Ref: ID# 273306

Enc. Submitted documents

c: Ms. Laurie Fox
Staff Writer
Dallas Morning News
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(w/o enclosures)