



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2008

Ms. Melody G. Chappell
Wells, Peyton, Greenberg & Hunt, L.L.P.
P.O. Box 3708
Beaumont, Texas 77704-3708

OR2008-04402

Dear Ms. Chappell:

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# 306366.

The Beaumont Independent School District (the "district"), which you represent, received a request for a specified school bus video. You claim that the requested information is excepted from disclosure under the Federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232(a). We have considered your argument and reviewed the submitted information.

We first note that the submitted video is an education record. The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA 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 an unredacted education record for our review. Because

¹A copy of the letter may be found on the attorney general's website, http://www.oag.state.tx.us/opinopen/og_resources.shtml.

our office is prohibited from reviewing this education record to determine the applicability of FERPA, we will not address FERPA with respect to this record. Determinations under FERPA must be made by the educational authority in possession of the education record.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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, 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 challenge 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.

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.

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 be the initials 'B' and 'D' intertwined.

Benjamin A. Diener
Assistant Attorney General
Open Records Division

BAD/jb

Ref: ID# 306366

Enc. Submitted documents

c: Ms. Beverly Brooks
KBMT-TV
525 Interstate 10 South
Beaumont, Texas 77701
(w/o enclosures)