



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 16, 2008

Ms. Sonya Marquez Garcia  
Escamilla & Poneck, Inc.  
5219 McPherson Road, Suite 306  
Laredo, Texas 78041

OR2008-06745

Dear Ms. Garcia:

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# 310750.

The United Independent School District (the "district"), which you represent, received a request for the audio recording of the hearing regarding the discipline of a named student at United High School on or about December 5, 2007. According to the information you submitted, the requestor is the student's guardian. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. However, you have failed to submit a copy of the requested information to this office for our review.

The Act generally requires a governmental body to submit to this office a copy of the requested information in order for this office to issue an open records ruling on the matter. *See* Gov't Code § 552.301(e). However, because you state that the requested information is an audio tape of a hearing regarding a student's discipline, we believe that the requested audiotape constitutes an "education record" for the purposes of the Family Educational Right and Privacy Act of 1974, section 1232g of title 20 of the United States Code ("FERPA"). *See* 20 U.S.C. § 1232g(4)(A) (defining "education records"); Open Records Decision No. 462 at 15 (1987); *Belanger v. Nashua, N. H. Sch. Dist.*, 856 F. Supp. 40, 48-50 (D.N.H. 1994) ("education records" include any records, files, document or other materials pertaining to student that are maintained by institution including records pertaining to student's juvenile court proceedings maintained by school district's attorney).

The United States Department of Education Family Policy Compliance Office 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 purposes of our review in the open records ruling process under the Act.<sup>1</sup> 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”). Because you have not submitted to our office the information in unredacted form, we will not address the applicability of FERPA to the information at issue, other than to explain that parents and guardians have a right of access to their own child’s education records and that right prevails over a claim under section 552.103 of the Government Code. See 20 U.S.C. § 1232g(a)(1)(A) (granting parents affirmative right of access to their child’s education records); see also 34 C.F.R. § 99.3 (“Parent means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian”); Open Records Decision No. 431 (1985) (information subject to right of access under FERPA may not be withheld pursuant to statutory predecessor to Gov’t Code Section 552.103; see also *Equal Employment Opportunity Comm’n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995) (holding FERPA prevails over inconsistent provision of state law. Questions about FERPA should be directed to the following agency:

Family Policy Compliance Office  
United States Department of Education  
400 Maryland Ave., S.W.  
Washington D.C. 20202-0498  
(202) 260-3887

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).

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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.

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,



Jessica J. Maloney  
Assistant Attorney General  
Open Records Division

JJM/jh

Ref: ID# 310750

c: Ms. Elisa M. Valadez  
226 Lake Powell  
Laredo, Texas 78041