



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 24, 2009

Mr. Gary Allmon Grimes  
Schuereberg & Grimes, P.C.  
Attorney for Mesquite Independent School District  
Wells Fargo Bank Building  
120 West Main, Suite 201  
Mesquite, Texas 75149

OR2009-16732

Dear Mr. Grimes:

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# 362630.

The Mesquite Independent School District (the "district"), which you represent, received a request for information pertaining to a named former substitute teacher, including information pertaining to a specified investigation. You claim that the submitted information is excepted from disclosure under sections 552.114 and 552.135 of the Government Code and the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a).<sup>1</sup> We have considered your arguments and reviewed the submitted information.

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<sup>1</sup>Although you also raise section 552.026 of the Government Code as an exception to disclosure, section 552.026 is not an exception to disclosure. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with the Family Educational Rights and Privacy Act of 1974. Gov't Code § 552.026. Additionally, although you also raise section 552.101 of the Government Code, you do not present any arguments against disclosure under that section.

Initially, we note that you have only submitted information pertaining to the specified investigation. Thus, to the extent any additional information responsive to the request for information pertaining to the named former substitute's employment with the district existed on the date the district received the request, we assume you have released it. If you have not released any such information to the requestor, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), 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.<sup>2</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"). You have submitted redacted and unredacted documents, which you claim are education records, including handwritten student statements, to this office for our review. *See* Open Records Decision No. 224 (1979) (student's handwritten comments protected under FERPA because they would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in the comments). Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted documents. Such determinations under FERPA must be made by the educational authority in possession of such records.<sup>3</sup> Accordingly, we also do not address your arguments under section 552.114 of the Government Code. *See* Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining the same analysis applies under section 552.114 of the Government Code and FERPA). We will, however, address the applicability of the other claimed exception to the submitted information.

You also assert that the submitted information is excepted in its entirety pursuant to section 552.135 of the Government Code. Section 552.135 of the Government Code provides in part:

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<sup>2</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>.

<sup>3</sup>In 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.

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

Gov't Code § 552.135(a)-(c). Section 552.135 protects an informer's identity, but does not encompass protection for witness information or statements. As noted above, you have partially redacted the submitted information pursuant to FERPA. Accordingly, upon review, we find that none of the submitted information identifies an informer for purposes of section 552.135. Thus, the district may not withhold any of the submitted information under section 552.135 of the Government Code.

In summary, this ruling does not address the applicability of FERPA to the submitted information. Determinations under FERPA must be made by the district. To the extent the district determines the submitted information is not subject to FERPA, it must be released to the requestor.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script that reads "Laura Ream Lemus".

Laura Ream Lemus  
Assistant Attorney General  
Open Records Division

LRL/jb

Ref: ID# 362630

Enc. Submitted documents

c: Requestor  
(w/o enclosures)