



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1991

Mr. Douglas A. Poneck
Attorney for South San Antonio
Independent School District
126 E. Main Plaza - Suite 3
San Antonio, Texas 78205-1824

OR91-539

Dear Mr Poneck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13463.

South San Antonio Independent School District (the district), which you represent, has received a request for information relating to a certain meeting. Specifically, the requestor seeks tape recordings of a meeting conducted on June 17, 1991. You claim the information contained on the tape recordings is excepted from required public disclosure by section 3(a)(1) of the Open Records Act. You also claim the information is excepted from disclosure by section 3(a)(3), the litigation exception.

Section 3(a)(1) excepts from disclosure information made confidential by federal or state statutes. The Family Education Rights and Privacy Act (FERPA) provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of educational records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization

20 U.S.C. § 1232g (a) (6)(b)(1). "[E]ducation records" are records which:

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. at subsection (a)(4)(A).

We have examined the documents submitted to us and have listened to the requested tape recordings. You advise us that the meeting which engendered the tape recordings related to allegations of district employee misconduct involving a student. The tape recordings (which are largely inaudible) include information which relates directly to the student at issue here and to another student. Other information not directly relating to the students is intertwined with information excepted under FERPA. We do not believe such information can be practicably severed from information excepted under FERPA. Also, we do not understand any of FERPA's exceptions to the definition of "education records" or to the confidentiality requirement for "education records" to apply here. *See id.* at a(4)(B), a(5)(b); *see also* V.T.C.S. art. 6252-17a, § 14(e) (incorporating the requirements of FERPA into the Open Records Act); Open Records Decision No. 431 (1985). We therefore conclude that the tape recordings must be withheld from public disclosure in their entireties. Because we resolve this issue under section 3(a)(1), we need not address the applicability of section 3(a)(3) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-539.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GK/lcd

Ref.: ID# 13463, 13685

cc: Ms. Rosa S. Rosales
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