



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 16, 1993

Ms. Merri Schneider-Vogel
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002-2781

OR93-189

Dear Ms. Schneider-Vogel:

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# 17973.

The Katy Independent School District (the "school district"), which you represent, has received a request for information relating to certain student residency investigations. You have submitted to us for review documents relating to three residency investigations and claim that the documents are excepted from required public disclosure by sections 3(a)(1) or 3(a)(14) of the Open Records Act.

Section 3(a)(14) excepts from required public disclosure "student records at educational institutions funded wholly, or in part, by state revenue . . ." V.T.C.S. art. 6252-17a, § 3(a)(14). Section 14(e), however, incorporates the requirements of the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, into the Open Records Act and makes them prevail over other inconsistent provisions of the Open Records Act. Open Records Decision No. 431 (1985). 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 . . .) of students without the written consent of their parents to any individual, agency, or organization

20 U.S.C. § 1232g(b)(1). "Education records"¹ are records which:

¹The phrase "student records" in section 3(a)(14) has generally been construed to be the equivalent of "education records." Thus, our resolution of FERPA in this instance also resolves the application of section 3(a)(14) to the requested information. See generally Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982).

- (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. § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982) at 3; 206 (1978).

We have examined the documents submitted to us for review. Some of the information submitted to us for review is such that its release would identify or tend to identify students. The names of students and other information tending to identify students has been marked and must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act in conjunction with FERPA. The remaining information, however, is not protected by FERPA.²

You also claim that exhibit 4d, a real estate lease, is excepted from required public disclosure by section 3(a)(1) of the Open Records Act, which excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision," in conjunction with the doctrine of common-law privacy.³ The doctrine of common-law privacy protects information containing highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, provided the information is not of legitimate public concern. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Disclosure of personal financial information about an individual may be intimate or embarrassing and ordinarily is of no legitimate concern to the public. Open Records Decision No. 373 (1983). Whether "special circumstances" exist which overcome the individual's privacy interests must be determined on a case-by-case basis. *Id.*; *see also* Open Records Decision No. 545 (1990).

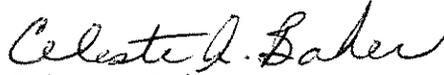
We have examined the real estate lease. It contains information revealing the amount of the lease payments, late payments, and security deposit. We conclude that this information is intimate and is of no legitimate concern to the public. This information has been marked and must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. The remaining unmarked information, however, must be released.

²You assert that Exhibit 4 should be withheld in its entirety under FERPA because "it is not possible to merely delete personally identifiable information in any of these documents since the requestor knows the identity of the student referred to in these documents." FERPA requires the school district to withhold only information that identifies or would tend to identify students. 20 U.S.C. § 1232g(b)(1).

³This lease is relevant to a residency investigation. We have marked the information in the lease that must be withheld under FERPA "to avoid personally identifying a particular student."

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 OR93-189.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/le

Ref.: ID# 17973
ID# 18018
ID# 18217

cc: Mr. Paul J. Coselli
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