



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 21, 1993

Mr. Eddie Derr
Superintendent
Comfort Independent School District
P.O. Box 398
Comfort, Texas 78013

OR93-249

Dear Mr. Derr:

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# 19309.

The Comfort Independent School District (the "school district") has received a request for information relating to class size and grade distribution for the school district's 7th and 8th grade math and science classes. You advise us that information relating to class size has been made available to the requestor. You object, however, to release of information relating to grade distribution. You claim that this information is excepted from required public disclosure by section 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 another source of law, specifically, the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, into the Open Records Act, and makes them prevail over conflicting provisions of the Open Records Act. *See* Open Records Decision No. 431 (1985). The 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).

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(b)(1). "Education records" are records which:

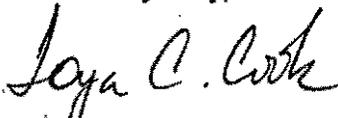
- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A). Sections 3(a)(14) and 14(e) may not be used to withhold entire documents; the school district must delete information only to the extent "reasonable and necessary to avoid personally identifying a student" or one or both of his parents. Open Records Decision Nos. 332 (1982); 206 (1978). Thus, only information identifying or tending to identify students or their parents must be withheld from required public disclosure.

You advise us that the school district has only 50 to 75 students enrolled in each grade and thus that information relating to grade distribution could reveal the identity of a student. You explain that a 1% distribution for a certain grade in so small a set of students could in fact represent the grade of one student and that "it could be public knowledge who that one student (i.e. 1%) actually is." We agree that the requested information could tend to identify students. Accordingly, the requested information is subject to FERPA and may not be released under the Open Records Act.

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 contact our office.

Yours very truly,



Toya C. Cook
Assistant Attorney General
Opinion Committee

TCC/GCK/le

Ref.: ID# 19309

cc: Mr. Regina Alexander
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