



Office of the Attorney General
State of Texas

June 11, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. J. David Thompson, III
Bracewell & Patterson
2900 South Tower Pennzoil Place
Houston, Texas 77002-2781

OR93-299

Dear Mr. Thompson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 19184.

The Cypress-Fairbanks Independent School District (the "school district"), which you represent, has received a request for information relating to certain school district disciplinary action. Specifically, the requestor seeks "the number of suspensions that have been imposed by Assistant Principal Worthington during the past three years and the nature of the offenses which precipitated the suspensions" and "records of all the appeals of suspensions that you have handled over the past three years." In addition, the requestor seeks "information on the rules to be followed during the appeal process." The requestor specifically excludes from his request the identity of any students which disclosure of the requested documents necessarily would reveal. As you do not comment on the availability of the requested rule information, we presume it has been or will be made available to the requestor. *See* Open Records Decision No. 363 (1983).

Concerning the request for information about the number of suspensions Assistant Principal Worthington has imposed during the last three years and the nature of the precipitating offenses, you claim that the school district does not maintain a specific record "aggregating student discipline cases by originating assistant principal or by type of offense . . . as a subcategory from each assistant principal." You contend that to comply with the request the school district must assemble and compile data from different sources to create a record that the school district does not need or use itself. The Open Records Act does not require a governmental body to prepare information in a form requested by a member of the public, Open Records Decision No. 467 (1987), or to arrange records in an order not maintained in its files. Attorney General Opinion JM-292 (1984) at 5. On the other hand, of course, the Open Records Act requires a governmental body to determine in good faith whether information is responsive to a request for information and to relate a request to information in its possession. *See generally* Open Records Decision No. 561 (1990) at 8. Furthermore, the Open Records Act requires some compilation of records.

See Attorney General Opinion JM-672 (1987) (the Open Records Act may require some computer programming to retrieve requested information that is not confidential).

Based on your statement that the school district does not maintain a record responsive to the first request, we conclude that the school district need not release the information. You claim that section 3(a)(14) of the Open Records Act exempts from required public disclosure the information responsive to the second request, *i.e.*, the records of all the appeals of suspensions the school district has handled over the last three years. Section 14(e) incorporates another source of law, specifically, the requirements of the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, into the Open Records Act and provides that FERPA prevails over conflicting provisions of the Open Records Act. *See* Open Records Decision No. 431 (1985). FERPA provides as follows:

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 that:

- (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).¹ A school district may not use sections 3(a)(14) and 14(e) to withhold entire documents; rather, the school district must redact information 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); *see also* Open Records Decision No. 165 (1977) (applicability of FERPA to information regarding student disciplinary action). Thus, the school district must withhold from required public disclosure only information identifying or tending to identify students or their parents.

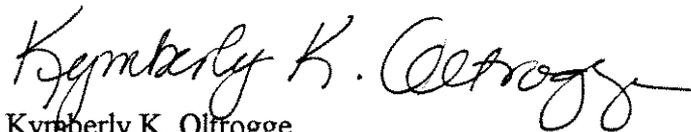
¹Section 3(a)(14) exempts from required public disclosure "student records at educational institutions funded wholly, or in part, by state revenue . . ." V.T.C.S. art. 6252-17a, § 3(a)(14). The phrase "student records" in section 3(a)(14) generally has been construed to be the equivalent of "education 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).

You have submitted to us for review two representative documents relating to student discipline. Both of the documents appear to be form letters from the school district to the parents of a student, informing them of certain misconduct resulting in the student's suspension. We note, initially, that one of the letters is unresponsive to the request, as it does not relate to "records of all the appeals of suspensions that you have handled over the past three years."

We conclude that some of the requested information identifies or tends to identify students. We have marked this information for your convenience and remind you that the school district must withhold it from required public disclosure under section 14(e) of the Open Records Act. The remaining information does not contain information identifying or tending to identify a student, and the school district must release it.

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,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

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Enclosures: Marked Documents

Ref.: ID# 19184
ID# 19230

cc: Mr. Alan R. Thiele
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(w/o enclosures)