



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 22, 1993

Ms. Myra C. Schexnayder  
Feldman & Associates  
Attorneys at Law  
12 Greenway Plaza, Suite 1202  
Houston, Texas 77046

OR93-688

Dear Ms. Schexnayder:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.<sup>1</sup> We assigned your request ID# 22539.

The Klein Independent School District (the "school district"), which you represent, has received a request for information regarding a school board investigation involving the requestor's daughter, a school district student. Specifically, the requestor seeks:

A complete and accurate accounting/inventory of any and all written statements, documents, interviewing notes, written summaries, memorandums, and investigative notes, to include but not limited to, Notes Of Parental Contact, prepared between September 1, 1992 thru and including September 13, 1993, that relate in any way, to matters being appealed by me, on behalf of my daughter, Crystal R. Lett, and prepared, as a result of their official positions as employees of KISD, by the following individuals:

Dr. Donald R. Collins  
Larry Whitehead  
Danielle Travis

Frank Lemmon  
Don Allen

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<sup>1</sup>We note that the Seventy-Third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

In addition, the requestor seeks the following information:

copies of any and all documents, memorandums, investigative notes, interview notes, written summaries, and written statements, to include but not limited [to] Notes of Parental Contact, prepared during the period September 1, 1992 thru and including September 13, 1993, that relate in any way, to matters being appealed by me, on behalf of my daughter, Crystal R. Lett, and prepared as a result of their official positions as employees of the Klein Independent School District, by [the aforementioned persons].

You have submitted the requested information to us for review and claim that sections 552.101, 552.111, and 552.114 of the act except it from required public disclosure.

You assert section 552.101, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," in conjunction with the attorney-client privilege. Although this office has frequently cited section 552.101 to except from required public disclosure information within the attorney-client privilege, the privilege is more specifically covered under section 552.107. Open Records Decision No. 574 (1990). Section 552.107 of the act excepts information if:

- (1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas; or
- (2) a court by order has prohibited disclosure of the information.

In Open Records Decision No. 574, this office held that section 552.107 protected information that revealed client confidences to an attorney or that revealed the attorney's legal advice, but that section 552.107 did not protect purely factual information. Some of the information submitted to us for review reveals client confidences to an attorney or contains an attorney's legal advice to his or her client. This information has been marked and may be withheld under section 552.107.

You also claim that some of the requested information is excepted from required public disclosure by section 552.111, which excepts information that constitutes "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the section 552.111 exception and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters

will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. As the requested information relates to a personnel matter, *i.e.*, a complaint about a teacher's disciplinary methods, we conclude that section 552.111 does not except it from required public disclosure.

Finally, you contend that section 552.114 exempts some of the information from disclosure. Section 552.114 excepts "information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.026 incorporates the federal Family Educational Rights and Privacy Act of 1974 ("FERPA") into the Open Records Act, providing:

This chapter does not require the release of information contained in education records of an educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, Sec. 512, Pub. L. No. 93-380, 20 U.S.C. Sec.1232g.

FERPA provides in part:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student . . . .

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 . . .) of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. §§ 1232g(a)(1)(A), 1232g(b)(1). "Education records" are defined in FERPA as 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). Therefore, FERPA specifically gives a parent the right to inspect the education records of their child only. The school district must delete information to the extent that it personally identifies another student or one or both parents of such a student. Open Records Decision No. 332 (1982) at 3. Thus, only information identifying or tending to identify other students or their parents must be withheld from required public disclosure, unless you receive written authorization from the students if they are over the age of 18, or their legal guardians to release the information. *See* 20 U.S.C. § 1232g(b)(1). We note that several of the documents contain information that would tend to identify other students. We have marked the portions of the documents that must be withheld under sections 552.114 and 552.026 unless the school district has written authorization to release such information.<sup>2</sup> However, the remainder of the information submitted to us for review, except as noted above, must be released in its entirety.

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 this office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/GCK/rho

Ref.: ID# 22539, ID# 22850  
ID# 22852, ID# 22989  
ID# 23062

Enclosures: Marked documents

cc: Mr. Robert Lett  
17202 Shadow Valley Drive  
Spring, Texas 77379  
(w/o enclosures)

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<sup>2</sup>Please note that we have remarked the documents that contain information excepted from disclosure by section 552.114. Only those portions specifically marked by our office that identify other students must be withheld pursuant to section 552.114. In addition, as noted above, you must release any information that you contend is protected by section 552.111.