



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 24, 1994

Ms. Janet Little Horton  
Bracewell & Patterson  
South Tower Pennzoil Place  
711 Louisiana Street, Suite 2900  
Houston, Texas 77002-2781

OR94-498

Dear Ms. Horton:

On behalf of the Humble Independent School District (the "district"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27412.

You explain that:

[D]uring the 1993-1994 school year, certain students at District elementary school campuses participated in the Teachers as Facilitators program [the "TAF program"]. This program was provided to the District by Baylor College of Medicine. Its purpose was to increase student self-esteem and thereby lower the risk of use of alcohol and tobacco. The TAF program had several elements. Certain specific teachers on the elementary school campuses which participated in the program were trained by persons from the Baylor College of Medicine to act as facilitators for student discussion groups. The groups were made up of students who exhibited certain characteristics which may be associated with those who are at higher risk for use of alcohol and tobacco. After teacher training was completed, teachers at the participating elementary school campuses could then refer students for participation in the TAF program.

The parents or guardians of students referred for participation in the TAF program were given a consent form describing the program, and were required to complete that consent form before the child was allowed to participate.

The district has received a request for, among other things, "[t]he number of Teachers As Facilitators Informed Consent Forms actually executed by a Parent or Guardian and a copy of each."<sup>1</sup> You do not controvert the request for the number of consent forms actually executed.<sup>2</sup> You believe, however, that sections 552.101 and 552.114 of the Government Code, as well as the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, prohibit the district from releasing copies of the consent forms.

You have sent a copy of an incomplete consent form for our review, although you did not send a copy of a completed consent form.<sup>3</sup> The consent form consists of a typewritten body describing the TAF program and states that the signer consents to his or her child's participation in the program. The form has four blanks for the signer to complete: one for the child's name, one for the parent's or guardian's signature, one for the date, and one for the name of the child's school.

Section 552.026 of the Government Code governs the release of student records by an educational institution that receives federal funds under programs the federal government administers. *See* Open Records Decision No. 480 (1987) at 3 (quoting Open Records Decision No. 427 (1985)). Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974.

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<sup>1</sup>The requestor seeks information in seven other categories. Because you discuss only the request for the number of consent forms that a parent or guardian executed and a copy of each, we assume that the district has released or will release to the requestor the remaining information.

<sup>2</sup>We therefore assume that the district has released or will release to the requestor that information. We note, however, that the Open Records Act does not require a governmental body to answer factual questions, Open Records Decision No. 555 (1990) at 1, nor to create new information, *see* Open Records Decision No. 561 (1990) at 9. On the other hand, a governmental body must make a good-faith effort to relate a request for information to information in the governmental body's possession. *Id.* at 8.

<sup>3</sup>Section 552.303 of the Government Code requires a governmental body, when it requests the decision of the attorney general as to the availability of particular information under the Open Records Act, to supply the attorney general with the specific information requested. Failure to supply the requested information results in a presumption that the information is public. *See* Open Records Decision No. 195 (1978) at 2.

The governmental body may overcome the presumption by showing that the information is confidential or that an exception designed to protect the interest of a third party is applicable. *Cf.* Open Records Decision No. 552 (1990) at 1. The exceptions you raise, sections 552.101 and 552.114 of the Government Code, as well as FERPA, pertain to confidential information or information implicating the interest of a third party. We therefore will proceed to consider your request for an open records decision.

We assume that the district receives federal funds under at least one program the federal government administers. We therefore will consider whether the district may release the requested documents under FERPA.

FERPA provides that no federal funds will be made available under an applicable program to an educational agency or institution that releases to anyone but certain enumerated federal, state, and local officials and institutions personally identifiable information (other than directory information<sup>4</sup>) contained in a student's education records unless the student's parent has authorized otherwise. See 20 U.S.C. § 1232g(b)(1). "Education records" consist of those records that contain information directly related to a student and that an educational agency or institution or a person acting for such agency or institution maintains. *Id.* § 1232g(a)(4)(A).

You state that the district maintains the requested consent forms. Additionally, we agree that the requested consent forms contain information directly related to students. Accordingly, the requested consent forms are education records under FERPA. You have not indicated that the parents who signed consent forms have consented in writing to the release of the requested documents to the requestor. Furthermore, the consent forms are not directory information. See *supra* note 4 (defining "directory information" for purposes of FERPA).

Notably, FERPA does not authorize an educational agency or institution to withhold documents in their entirety but only to withhold information that identifies students or parents. See 20 U.S.C. § 1232g(b)(1); Open Records Decision No. 332 (1982) at 3. The district must redact all information from the consent forms to the extent "reasonable and necessary to avoid personally identifying a particular student" or one or both of the student's parents. *Id.* (citing Open Records Decision No. 206 (1978)). This office has concluded that handwritten information is information tending to identify its author. See Open Records Decision No. 224 (1979) at 2.

In conclusion, the district must release to the requestor the consent forms to the extent that they do not identify particular students. The district must redact all handwritten information. The district may redact typewritten information only if it tends to identify a particular student or one or both of the student's parents. Neither section 552.101 nor section 552.114 of the Government Code apply to the unredacted information.

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<sup>4</sup>For the purposes of FERPA, the term "directory information" relating to a student includes: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height if the student is a member of an athletic team, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution the student attended. 20 U.S.C. § 1232g(a)(5)(A). An educational agency or institution that makes public directory information must comply with the notice provisions in section 1232g(a)(5)(B) of title 20 of the United States Code.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an 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,



Kimberly K. Oltrogge  
Assistant Attorney General  
Open Government Section

KKO/LRD/rho

Ref.: ID# 27412

cc: Terry Lowry  
The Link Letter  
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