



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 30, 1994

Mr. Therold I. Farmer
Law Offices of Walsh, Anderson, Underwood,
Schulze & Aldridge, P.C.
6300 La Calma, Suite 200
Austin, Texas 78752

OR94-138

Dear Mr. Farmer:

You have asked this office to determine if 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# 23738.

The Burnet Independent School District received an open records request on December 9, 1993. Your letter to this office requesting an open records decision was hand-delivered December 21. You therefore failed to request a decision from this office within the 10 days required by section 552.301 of the Government Code. Section 552.301 requires a governmental body to release the requested information or to request a decision from the attorney general within 10 days of receiving the request if it is information the governmental body wishes to withhold. If the governmental body fails to request a decision within 10 days of receiving the open records request, the information at issue is presumed public. Gov't Code § 552.302. The governmental body must show a compelling reason to overcome this presumption, such as another law that requires confidentiality or protection of third party interests which have been recognized by the courts. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decisions Nos. 319 (1982); 150 (1977).

You show a compelling reason to overcome this presumption. The documents at issue are lists, broken down by bus route, which give information about the students who ride those particular routes on school buses ("ridership lists").¹ You argue that the ridership lists are education records protected by section 552.114 and section 552.026.

¹The requestor also asked for certain school district policies and the names of the district's attorneys. You state that this information has already been released to the requestor, so only the listing of bus riders is at issue.

Under section 552.114, the release of confidential information could impair the rights of third parties. Improper release of information under this section also constitutes a misdemeanor. See Gov't Code § 552.352. Under section 552.114(a), you must withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.026 also excepts education records from disclosure, unless released in conformity with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), title 20 of the United States Code, section 1232g. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases identifying information in a minor student's records without parental consent.² 20 U.S.C. § 1232g(b)(1). Protection of education records is a compelling reason that overcomes the presumption that these records are open.

"Education records" are records that contain information directly related to a student and are maintained by an educational agency or institution. *Id.* § 1232g(a)(4)(A). The records you submitted show that ridership lists for each route contain the following information: (1) name of bus driver; (2) bus number; (3) student home telephone number; (4) name of school campus that each student attends; (5) name of student; and (6) date each student started riding the particular route. For purposes of sections 552.114 and 552.026, these ridership lists are protected education records. However, only information which would serve to identify the student or his parents is excepted from disclosure. Open Records Decision No. 332 (1982) at 3. This information includes certain dates, names of places or other specific information which would serve to identify a student or his parents. Open Records Decision No. 294 (1981) at 2. Therefore, without parental consent you may not release the names of the students who ride each route; their home telephone numbers; the date each student began riding the route; or the names of the campuses each child attends.³ You must release the non-identifying information, which includes the name of the bus drivers and the bus numbers.⁴

²FERPA does not prohibit the release of directory information under title 20 of the United States Code section 1232g(b)(1). See 20 U.S.C. § 1232g(a)(5)(A) (directory information includes student names, addresses, and telephone numbers). However, the requestor here does not seek general directory information which would provide information about all students but rather personally identifiable information about individual students. Open Records Decision No. 332 (1982) at 3 (information must be withheld to extent necessary to avoid identifying students or parents).

The requestor asserts that she has previously received copies of bus ridership lists from the district. We note that the district may not release identifying information in a minor student's records except in accordance with FERPA.

³The lists you sent show that riders attend various campuses. In one of the lists you sent, only one student attended a particular campus. Under these circumstances, we believe the names of the campuses from which a particular bus picks up students would be identifying information.

⁴The requestor has told this office that she wants to know how many students ride each bus route. The lists you submitted repeat the bus driver's name and the route for each student, so the requestor should be able to ascertain from this information how many students ride each route. The district may also inform the requestor as to how many students ride each route.

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,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 23738
ID# 24231

Enclosures: Submitted documents

cc: Ms. Mary Minton
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(w/o enclosures)