



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 26, 1994

Mr. Douglas A. Poneck  
Law Offices of Escamilla & Poneck  
1200 South Texas Building  
603 Navarro  
San Antonio, Texas 78205-1826

OR94-178

Dear Mr. Poneck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 23979.

The Edgewood Independent School District received a request for information relating to a sexual abuse investigation involving a special education student.<sup>2</sup> You contend the information is excepted from required public disclosure under Government Code sections 552.101, incorporating the informer's privilege and the common-law doctrine of privacy, 552.114 and 552.026, incorporating the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 1417(c) of the Education of the Handicapped Act, 20 U.S.C. § 1400 et seq., provides that:

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<sup>1</sup>The Seventy-third Legislature repealed V.T.C.S. article 6252-17a.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.

<sup>2</sup>We note that the request for information also seeks any "police report(s) related to the matter." The requested information indicates that no police report was submitted to the school. The Open Records Act does not ordinarily require a governmental body to obtain information not in its possession. Open Records Decision No. 558 (1990).

[t]he [Secretary of Education] shall take appropriate action, in accordance with the provisions of sections 1232g of this title, to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the [Secretary of Education] and by State and local educational agencies pursuant to the provisions of this subchapter.

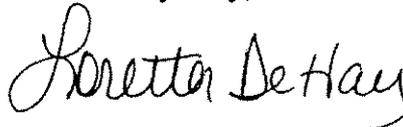
Section 1232g of title 20 of the United States Code, Family Educational Rights and Privacy Act of 1974 ("FERPA"), provides the following:

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

20 U.S.C. § 1232g(b)(1) (emphasis added). Section 300.571 of title 34 of the Code of Federal Regulations, providing regulations for the administration of the Education of the Handicapped Act, further provides that parental consent must be obtained before personally identifiable information may be disclosed. Although we have previously ruled that student records may not be withheld in their entirety but rather withheld to the extent "reasonable and necessary to avoid personally identifying a particular student" or one or both of his parents, Open Records Decision No. 332 (1982) at 3, where the identities of students are easily detectable from the records the documents must be withheld in their entirety, *see* Open Records Decision No. 294 (1981) (information may be withheld where it does not identify individual students but there is a relatively small number of students to whom it could be applicable). In this instance, we believe that the identity of the student at issue is easily detectable from the requested information. Accordingly, you must withhold the requested information from required public disclosure under section 552.101 as "information considered to be confidential by law."

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

Ref.: ID# 23979  
ID# 24849

Enclosures: Submitted documents

cc: Ms. Marlene Hawkins  
Representative for Mr. German Recio  
Route 1, Box 114  
San Marcos, Texas 78666  
(w/o enclosures)