



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 27, 1994

Ms. Jennifer W. Jacobs
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR94-276

Dear Ms. Jacobs:

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# 24890.

The Pasadena Independent School District (the "district"), which you represent, received several open records requests from an individual for student disciplinary records. Specifically, the requestor seeks records for those students in the tenth, eleventh, and twelfth grades who 1) were assigned to the "tardy room" during the first or second six weeks of school during the 1993-94 school year and who did not show up to the assigned room and 2) have been tardy to homeroom or class and have gone to their next period class instead of the tardy room. The requestor also seeks the disciplinary record of every student accused of being tardy.

You state that the district does not maintain the requested records in the form sought by the requestor in that the district does not create or maintain records listing students who were tardy under particular circumstances. It is well-established that the Open Records Act does not require a governmental body to prepare new information in response to an open records request, Open Records Decision No. 342 (1982), or to prepare information in the form requested by a member of the public. Open Records Decision No. 145 (1976); *see also* Open Records Decision No. 347 (1982). On the other hand, in Attorney General Opinion JM-672 (1987), the attorney general indicated that a minimal computer search may be required for existing information stored in computers. "If public information sought in a particular instance may be 'called up' under an existing program, a governmental body must perform this search." Attorney General Opinion JM-672 at 5. Whether the formulation of additional programming constitutes the creation of new material, and is therefore not required, must be determined on a case-by-case basis.

Id. If the district is incapable of creating lists of the requested information without the creation of a complex new program, the act does not require the district to do so.

Assuming that existing computer programs cannot create such lists, we now address the extent to which the district may release to the requestor student disciplinary records. Section 552.114(a) of the Government Code requires that you withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Additionally, section 552.026 of the Government Code 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, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). When a student has attained the age of eighteen years or is attending an institution of postsecondary education, the student holds the rights accorded by Congress to inspect these records. *Id.* § 1232g(d). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A).

For purposes of FERPA, the disciplinary records at issue clearly constitute "education records" to the extent that they contain information about identifiable students. However, education records must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982) at 3; 206 (1978) at 2. You have submitted to this office for review as representative of the records at issue two types of records: a computer printout listing the date, description of misbehavior, and action taken with regard to each incident in which a particular student received discipline, and another computer printout listing, among other things, the reason a particular student was given detention, hours of detention given, the date of the detention, and the district employee who cited the student. We have marked those portions of each of these documents that the district must withhold pursuant to FERPA in order to protect the identity of the students. The district must release the remaining portions of these records.

Finally, you request guidance as to the amount that the district may properly charge the requestor for these records. In this instance, because the records at issue are

contained in the district's computers, the district is authorized to assess those charges authorized by section 552.262 of the Government Code. Section 552.262 provides:

The charge for access to public records that are comprised in a form other than standard or smaller sized pages *or that are in computer record banks*, microfilm records, or other similar record keeping systems shall be set:

(1) making every effort to match the charge with the actual cost of providing the record;

(2) after consultation between a governmental body's officer for public records and the General Services Commission; and

(3) in an amount that reasonably includes all costs related to providing the record, including costs of materials, labor, and overhead. [Emphasis added.]

See also Gen. Servs. Comm'n, 19 Tex.Reg. 2486 (1994) (to be codified at 1 T.A.C. § 111.63). Any question as to the proper amount the district may charge the requestor for copies of these computer records should be addressed to the Material Management Section of the General Services Commission (telephone number 512-475-2497).

If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Open Government Section

MRC/RWP/sbm

Ref.: ID# 24890

Enclosures: Marked documents

cc: Ms. Marilyn Stoffels
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(w/o enclosures)