



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 29, 1994

Mr. Randel B. Gibbs
Mr. Michael S. Mitchell
Law Offices of Earl Luna, P.C.
4411 N. Central Expressway
Dallas, Texas 78205

OR94-304

Dear Mr. Gibbs and Mr. Mitchell:

On behalf of the Lancaster 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# 25110.

The district has received a request for any and all documents relating to a particular student. Because the requestor is a representative of the student's parents, the district has released most of the documents to the requestor. However, two of the documents are letters written by parents of classmates of the student whose records have been requested. You believe these letters constitute student records of the children whose parents wrote the letters and, accordingly, section 552.114 of the Government Code precludes the district from releasing the letters to the requestor. You have submitted to this office copies of the letters at issue for our review.

Section 552.114(a) of the Government Code excepts from public disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.114 applies to schools that do not receive any federal funding. *See* Open Records Decision No. 431 (1985) at 3 (stating that federal law prevails over inconsistent state law).

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.

We assume that the district receives federal funds under at least one program that the federal government administers. We therefore will consider whether the district may release the documents you have submitted under the federal Family Educational Rights and Privacy Act of 1974 ("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) 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).

The letters at issue here are not directory information. *Id.* § 1232g(a)(5)(A) (defining "directory information"). Furthermore, inasmuch as these letters "contain information directly related to a student" and are maintained by an educational agency or institution, we believe that FERPA applies. As you point out, however, these education records refer to more than one student, and the parents of only one of the students named in the letters has requested the documents. We must consider, therefore, whether in this particular situation the district must withhold the records in their entirety from the requestor or withhold only those portions relating to students other than the child of the requestor.

In Open Records Decision No. 332 (1982) this office considered, among other things, whether FERPA required an independent school district to keep confidential parents' letters to members of the board of trustees regarding a particular teacher's performance. The teacher requested copies of the letters to respond to the allegations. Open Records Decision No. 332 at 1. This office concluded that FERPA required the independent school district to withhold from the requestor only information that identified students or parents. The decision stated:

The letters at issue here contain information "directly related to students," and, in our opinion, [FERPA excepts them] from disclosure . . . , whether written by the students themselves or by their parents. Where the student is less than 18 years of age and is attending an institution of secondary education, his parents stand in his place for purposes of [FERPA].

[Section 552.026 of the Government Code and FERPA] may not be used to withhold each of the letters in their entirety, but only information [that] identifies students or parents. The district should delete all information contained therein to the extent "reasonable and necessary to avoid personally identifying a particular student in the class," Open Records Decision No. 206 (1978), and, in this instance, to the extent necessary to avoid personally identifying one or both parents of such a student.

Id. at 3.

Thus, in general, an educational agency or institution must deidentify a letter from a parent, even if the letter directly relates to a particular student, and release to a requestor the redacted document. Here, however, the letters are handwritten. In Open Records Decision No. 224 (1979) at 2, this office concluded that the release of a student's handwritten comments, even if unsigned, would make the identity of the student easily traceable through the handwriting, style of expression, or the particular incidents related in the comments. We believe the same rationale applies here: the release of these handwritten comments would make the identity of the parent authors easily traceable through the handwriting, the style of expression, and the particular incidents related in the comments. Deidentifying the documents at issue here is not possible. We conclude, therefore, that the district must withhold these two letters from the requestor.¹

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 our office.

Yours very truly,



Kymerly K. Oltrogge
Assistant Attorney General
Open Government Section

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¹In the event that the district receives no federal funds under a program that the federal government administers, we believe that section 552.114 of the Government Code, which generally exempts from required public disclosure "student records at educational institutions funded wholly, or in part, by state revenue," also would mandate that the district withhold the information from the requestor.

Ref.: ID# 25110

Enclosures: Submitted documents

cc: Mr. Larry Parks
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(w/o enclosures)