



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1994

Mr. Jay Watson
Superintendent
West Hardin County Consolidated
Independent School District
P.O. Box 128
Saratoga, Texas 77585

OR94-876

Dear Mr. Watson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 29639.

The West Hardin County Consolidated Independent School District (the "school district") has received a request for information relating to the school board's next meeting. You advise us that the requestor seeks the following information:

- a board meeting schedule;
- a complete board packet for the next board meeting;
- the 1993-1994 school budget;
- the 1994-1995 school budget; and
- the current administrative salary schedule.

You advise us that you have made some of the requested information available to the requestor, including the meeting agenda, the minutes, the bills paid, and the monthly tax collector's report. You object, however, to release of the remainder of the requested information.

Section 552.301(a) of the Government Code provides:

A governmental body that receives a written request for information that it considers to be within one of the exceptions under Subchapter C must ask for a decision from the attorney general about whether the information is within that exception if

there has not been a previous determination about whether the information falls within one of the exceptions. The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.

Section 552.302 provides:

If a governmental body does not request an attorney general decision as provided by Section 552.301(a), the information requested in writing is presumed to be public information.

You received the open records request on September 19, 1994. You requested a decision from this office by letter dated October 4, 1994. On the basis of these facts, we conclude that the school district failed to request a decision within the ten-day period section 552.301(a) of the Government Code mandates.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982) at 1-2. The governmental body must show a compelling reason to withhold the information to overcome this presumption. See *Hancock*, 797 S.W.2d at 381. Normally, a governmental body can overcome the presumption of openness by a compelling demonstration that the governmental body should not release the requested information to the public, that is, that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. You seek to withhold pages 40 through 81 of the requested meeting packet in deference to third-party privacy and proprietary interests, see Gov't Code § 552.305, and under section 552.111 of the Government Code.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." We note that the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, governs some of the requested information. 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 education records (or personally identifiable information contained therein . . .) of students without the written consent of their parents to any individual, agency, or organization

Id. § 1232g(b)(1). "Education records" are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987) at 14-15; 447 (1986).¹ Information 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); 206 (1978). FERPA applies to students formerly enrolled at an educational agency or institution. *See* Open Records Decision Nos. 539 (1990); 469 (1987).

We have examined the information submitted to us for review. It reveals the names of students and other information release of which would make the students’ identities “easily traceable.” *See* 34 C.F.R. § 99.3 (providing that nondisclosure may be required if disclosure would make a student’s identity “easily traceable”). This information, which we have marked, must be withheld from required public disclosure under section 552.101 of the Government Code. The school district must redact the student and parent names and release them only as FERPA permits.² The remainder of the requested information, however, does not reveal the identity of students or their parents, nor would its release make the students’ identities “easily traceable.” FERPA does not govern this information.³

Next, we address whether the applicability of section 552.111 of the Government Code constitutes a compelling reason to withhold the requested information. The fact that information might have been excepted from disclosure under section 552.111 had you made a timely request for a ruling does not constitute a compelling reason to withhold the information. *See, e.g.*, Open Records Decision No. 150 (1977) (concluding

¹The phrase “student record” in section 552.114 has generally been construed to be the equivalent of “education records.” Thus, our resolution of the availability of this information under FERPA in this instance also resolves the applicability of section 552.114 to the requested information. *See generally* Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982).

²You did not submit the open records request to us for review. We are therefore unable to determine whether the requestor is the parent of one of the students identified in the submitted records. We note that FERPA prohibits an educational agency or institution from denying “the parents of students who are or have been in attendance at a school of such agency or at such institution . . . the right to inspect and review the education records of their children. 20 U.S.C. § 1232g(a)(1)(A). Accordingly, the school district must release the requested information if it contains information relating to the requestor’s child.

³After reviewing the records submitted to us for review, we do not believe that there are any other third party privacy or property interests, such as those enumerated in section 552.305 of the Government Code, that are implicated in this request for information.

that section 552.111 is waived if not timely raised). We conclude, therefore, that the school district may not withhold the requested information under section 552.111 of the Government Code. Thus, the school district must release the requested information except for the portions that we have marked as excepted under FERPA.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Loretta DeHay". The signature is written in a cursive style with a large, looping "y" at the end.

Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 29639

Enclosures: Submitted documents