



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 26, 1995

Mr. David B. Hodgins
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR95-499

Dear Mr. Hodgins:

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# 33044.

The Cypress-Fairbanks Independent School District (the "district") received a request for various information concerning several cheerleader contests, a student council election, and an induction to the National Honor Society. We understand that the district is making available to the requestor, a parent, requested information about his child. We are unable to determine whether the district provided the requestor with redacted versions of the submitted information or whether the district provided the information to the requestor in another form. For purposes of this ruling, we are assuming that the information was given to the requestor in another form and that he has not been given redacted copies of the submitted documents. After reviewing the original request for information, it appears that the only remaining categories of requested information are:

Cheerleader selection summary sheet records for all participants during the last 3 years.

A copy of the videotape taken for this year's cheerleading tryouts of all sophomores and juniors that were competing for Varsity in front of the judges.

Grade point average for . . . all newly inducted members of the National Honor Society in the child's class for this year.

You claim that this requested information is excepted from disclosure under section 552.026 of the Government Code and by the Family Educational Rights and Privacy Act of 1974.¹ You submitted representative samples of the requested information for our review.² We have considered the exceptions you claimed and have reviewed the sample documents.

Section 552.026 of the Government Code incorporates the requirements of the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, into the Open Records Act. Open Records Decision No. 431 (1985). 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

20 U.S.C. § 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). We agree that the submitted documents are "education records" under FERPA.

¹You also mention that section 552.114 excepts the requested information from disclosure. Section 552.114 requires that "information in a student record at an educational institution funded wholly or partly by state revenue" must be withheld, but may be made available on the request of the student or other authorized person. The term "student records" in section 552.114 has been generally construed to be the equivalent of "student records" under FERPA. *See generally* Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990), 477 (1987), 332 (1982).

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. We note that you did not submit any videotapes to this office for review. As we have not had the opportunity to review the videotape or videotapes requested, we do not decide whether the requested videotape or videotapes are excepted from required public disclosure under the Open Records Act.

However, the district must release to the requestor/parent information on the sample documents regarding his child. Section 1232g(a)(1)(A) provides:

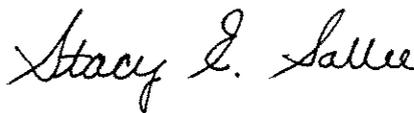
No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the educational records of their children.

As to information pertaining to other children, section 1232(g)(b)(2)(A) provides that no release of information relating to minor children can take place unless there is a written consent from the student's parents that specifies the records to be released, the reasons for the release, and to whom the records should be released. However, 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).

After a review of the documents, we conclude that the documents may be released with certain identifying information redacted. We have marked the sample documents to show what information must be withheld.

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,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

SES/RHS/rho

Ref.: ID# 33044

Enclosures: Marked documents