



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 21, 1996

Mr. S. Anthony Safi  
Mounce & Galatzan  
P.O. Drawer 1977  
El Paso, Texas 79950-1977

OR96-0379

Dear Mr. Safi:

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# 38888.

The El Paso Independent School District ("EPISD") received a request for a response to certain questions related to a specific individual's student records. You have not submitted any designated records for our review. Additionally, you do not represent to have the approval of either the parents' or the former student, now of the age of majority, for the release of the records. You contend the requested information is excepted from required public disclosure under section 552.101 and section 552.114 of the Government Code.

Ordinarily, the Open Records Act does not require the governmental body to answer factual questions. Open Records Decision Nos. 379 (1983) at 4, 555 (1990). It simply requires, with certain exceptions, that governmental bodies make available information they collect, assemble, or maintain. Open Records Decision No. 379 (1983) at 4. Nor does the Open Records Act require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.-- San Antonio 1978, writ dismissed). Thus, the Open Records Act would not require EPISD to respond to the factual questions. However, since you reference the student's eligibility file and the availability of information which may be responsive to the questions, we shall address your arguments under section 552.026 of the Government Code. As you have properly asserted, it appears that all of the records requested may be excepted from disclosure under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, as applied through section 552.026 of the Government Code. This office has recently issued Open Records Decision No. 634 (1995), which concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public

disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

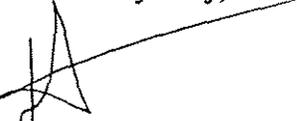
We remind you that this ruling applies only to "education records" under FERPA. "Education records" are records that

- (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.

20 U.S.C. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987), 447 (1986). 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).<sup>1</sup> Because the requestor has asked for information regarding a particular student, in this instance we conclude that all of the information must be withheld under FERPA and section 552.101 of the Government Code. If you have further questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office. *See* Open Records Decision No. 634 (1995) at 4 n.6, at 8 n.9. We believe that this ruling is dispositive as to the records that are excepted from required public disclosure by FERPA or section 552.114 of the Government Code.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

  
Janet I. Monteros  
Assistant Attorney General  
Open Records Division

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Ref.: ID# 38888

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<sup>1</sup>*But see* 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to that student's education records). *See also* Open Records Decision No. 431 (1985) (Open Records Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student).

cc: Gudrun Aguirre  
4824 Sierra Madre  
El Paso, Texas 79904