



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 19, 1996

Ms. Kelli Hamm Karczewski
Schwartz & Eichelbaum, P.C.
800 Brazos, Suite 870
Austin, Texas 78701

OR96-1483

Dear Ms. Karczewski:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100604.

The Clint Independent School District (the "district") received an open records request for the following information:

1. Records, documents or reports of allegations made by students involving sexual or physical abuse made against school teachers, counselors or other school district employees since 1991.
2. The total number of sexual and physical abuse allegations made against school teachers, counselors or other school district employees listing each year from 1991 to current.
3. The number of sexual abuse allegations made against school teachers, counselors or other district employees for each year from 1991 to current. Also the number of allegations that were substantiated for each of these years, and the administrative or other discipline measures, if any, taken against, the school teacher, counselor or other school employee.
4. The number of physical abuse allegations made against school teachers, counselors or other district employees for each year from 1991 to current. Also the number of allegations that were substantiated for each of these years, and the administrative or other disciplinary measures, if any, taken against the school teacher, counselor or other school employee.

You assert that the district does not have all of the information requested and that the information which is responsive is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.114 of the Government Code.

You state that the district does not have documents showing the aggregate or total number of abuse allegations made, allegations sustained, and disciplinary actions taken in response. *See* Open Records Decision No. 458 (1987) (governmental body not required to provide information that does not exist at time of request). The district maintains other records that are responsive to the request for information, but has determined that these records are confidential pursuant to the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and section 552.114 of the Government Code.

This office has 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. Open Records Decision No. 634 (1995) applies only to "education records" under FERPA, which 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). *But see* 20 U.S.C. § 1232g(a)(1)(A), (d) (parent or adult student has affirmative right of access to student's education records). *See also* Open Records Decision No. 431 (1985) (exceptions do not authorize withholding of "education records" from adult student).¹ Since you inform this office that the district has made a determination that all responsive documents are excepted from disclosure under FERPA, we need not address your other arguments against disclosure.²

¹If you have further questions as to the applicability of FERPA to the information at issue, you may consult with the United States Department of Education. *See* Open Records Decision No. 634 (1995) at 4 n.6, 8 n.9.

²You did not submit to this office for review, nor were you required to submit, copies of education records. *See* Open Records Decision No. 634 (1995) at 10 (if district does not make

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/rho

Ref.: ID# 100604

Enclosures: Submitted documents

cc: Mr. Raul Hernandez
El Paso Times
P.O. Box 20
El Paso, Texas 79999
(w/ Open Records Decision No. 634 (1995))

(Footnote continued)

a determination but seeks determination from this office, district must first obtain parental consent to disclose personally identifiable information or must edit records to protect personally identifiable information).

We note that if the information at issue is also subject to section 261.201(a) of the Family Code, as you allege, even de-identified records may be confidential. Section 261.201(a) of the Family Code generally provides for confidentiality of a report of alleged or suspected abuse and for the information used or developed in an investigation of alleged or suspected abuse.