



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 26, 1996

Mr. Richard A. Woods
Superintendent
Union Hill Independent School District
P.O. Box 370
Gilmer, Texas 75644

OR96-2251

Dear Mr. Woods:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37371.

The Union Hill Independent School District (the "district") received a request for several categories of information in response to an October 23, 1995 incident resulting in the expulsion of two students. You have not raised any exceptions under the Open Records Act but ask whether you should release the information requested. You have submitted a representative sample of some of the information requested to this office for our review.¹

The first request seeks "[a]ll records of past disciplinary actions taken for same offense (fighting on campus) since 1990." The Office of the Attorney General will raise section 552.101 on behalf of a governmental body when necessary to protect third-party interests. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987). Section 552.101 of the act excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." It appears that a portion 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, or section 552.114 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

¹We assume that the 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). 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.

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).² Because you have submitted to this office records which have not been de-identified, we have marked the portions of the documents which we conclude must be withheld under FERPA to avoid personally identifying the student. The remainder of these documents may not be withheld.

The second request seeks a "[l]ist of teacher or teachers on cafeteria duty on morning of October 23, 1995." The document submitted to this office is a duty list for the week of October 23, 1995. This document must be released to the requestor.

The third and fourth requests seek the ratio of black and white faculty members and students. You state that you do not have a record of ratios but can provide a student list and a faculty list designating each individual's race. The Open Records Act does not ordinarily require a governmental body to take affirmative steps to create or obtain information that is not in its possession or to prepare information in a form requested by a member of the public. Open Records Decision Nos. 534 (1989), 467 (1987). However, section 552.231 of the Government Code requires programming or manipulation of data in response to a request for information in certain circumstances. We conclude that you must provide both the student list (with the names redacted to avoid personally identifying any particular student) and the faculty list with the requested designations and, by doing so, you will be in compliance with your requirements under the Open Records Act.

²*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).

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,

A handwritten signature in black ink that reads "Todd Reese". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 37371

Enclosures: Submitted documents

cc: Mr. Raymond Johnson
Gladewater/Upshur County Branch of the N.A.A.C.P.
P.O. Box 251
Gladewater, Texas 75647
(w/o enclosures)