



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 30, 1996

Mr. Dennis J. Eichelbaum  
General Counsel  
Schwartz and Eichelbaum, P.C.  
3700 Ross Avenue  
P.O. Box 69  
Dallas, Texas 75204-5491

OR96-2474

Dear Mr. Eichelbaum:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government code. Your request was assigned ID# 36776.

The Dallas Independent School District (the "school district") received a request for the evaluations of 25 special education teachers at a specified school for the 1993-1994 school year and the minutes of a particular "ARD meeting." You have submitted to this office a representative sample of records which you assert are responsive to the request.<sup>1</sup> We have considered the arguments you make and have reviewed the documents at issue.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides:

A document evaluating the performance of a teacher or administrator is confidential.

This office recently interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that, for purposes of section 21.355 of the Education Code, a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* We conclude that you must withhold the requested teacher evaluations from public disclosure pursuant to section 552.101 in conjunction with section 21.355 of the Education Code.

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<sup>1</sup>In 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). 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.

Additionally, you contend that the school district may withhold the requested minutes of the ARD meeting from required public disclosure pursuant to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), title 20 of the United States Code, section 1232g and 552.114.

Accordingly, we observe section 552.114 of the Government Code states that:

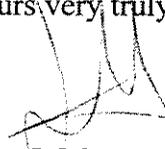
(A) Information is excepted from the requirements of Section 552.021 if it is information in a student records at an educational institution funded wholly or partly by state revenue.

(B) A record under Subsection (a) shall be made available on the request of:

- (1) educational institution personnel;
- (2) the student involved or the student's parent, legal guardian, or spouse; or
- (3) a person conducting a child abuse investigation required by Section 34.05, Family Code.

Under section 552.114, the release of confidential information could impair the rights of third parties. Improper release of information under this section also constitutes a misdemeanor. *See* Gov't Code § 552.352. Section 552.026 also excepts education records from disclosure, unless released in conformity with FERPA. "Education records" are records that contain information directly related to a student and are maintained by an educational agency or institution. 20 U.S.C. § 1232g(a)(4)(A). The requestor here asks for specific ARD meeting minutes. Although only information which would serve to identify the student or his parents is excepted from disclosure, these requested records if released in their entirety would still reveal the identity of the students to the requestor. Open Records Decision No. 332 (1982) at 3. Moreover, the requestor does not come within the exceptions denoted in section 552.114. We agree therefore that the school district must withhold the ARD meeting minutes in their entirety.<sup>2</sup>

Yours very truly,

  
Janet I. Monteros  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We note that although the requestor has specifically sought minutes from an April 1994 meeting, you have submitted for our review minutes from an ARD meeting that took place in 1992. We assume that you intended to submit the April 1994 minutes. We presume that the minutes are substantially similar documents.

Ref.: ID# 36776

Enclosures: Submitted documents

cc: Mr Barry Berger  
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Houston, Texas 77002-3308  
(w/o enclosures)

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