



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 6, 1997

Mr. Jose R. Guerrero
Montalvo & Ramirez
900 N. Main
McAllen, Texas 78501

OR97-1307

Dear Mr. Guerrero:

You represent the La Joya Independent School District (the "district"). On behalf of the district, you have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106277.

The district received an open records request for, among other things, various records pertaining to allegations of sexual harassment against a particular district teacher. The requestor apparently represents the district teacher in a grievance matter concerning a letter of reprimand received by the teacher. You contend the requested student records are excepted from required public disclosure pursuant to sections 552.026 and 552.114, as "education records," as defined in the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 20 U.S.C. § 1232g(a)(4)(A). You also contend that portions of these records must be withheld from the public pursuant to common-law and constitutional privacy, as incorporated into section 552.101 of the Government Code.¹

Initially, we note that the requestor seeks four categories of information. The *first* category of information is a request for various records concerning the investigation of the allegations against the district teacher. As it appears that you do not seek a ruling regarding the records in the first category, we assume that you will release the requested information which is not confidential by law. As for the *second* category of information, it appears to this office that the district has made a determination that all responsive student records are excepted from disclosure under FERPA. The next two categories of information seek general information regarding the district's "policies, administrative regulations, directives" regarding allegations of misconduct by district personnel and "all notes, letters, memoranda" previously requested. As for these two latter categories of requested information, since

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

the district has not submitted documents that are, for example, part of the "district policies" and "directives," we assume that the district has released or will release all requested information not pertaining to students to the requestor. Thus, based on your explanations, you appear to claim that only the student record information is excepted from disclosure pursuant to FERPA and common-law and constitutional privacy, as incorporated into section 552.101. Therefore, in this ruling we will only address whether the requested student records are excepted from disclosure.

You claim that portions of the requested records are excepted from disclosure under sections 552.026 and 552.114 of the Government Code. In Open Records Decision No. 634 (1995), this office concluded that (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. 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). 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).

In this instance, the identity of the particular student whose interests are protected under FERPA is known to the requestor, as he is the representative of the district teacher accused of the alleged sexual harassment involving the student. Thus, as it is evident that the requestor can clearly identify the student referenced, due to the information he possesses, attempts to remove all identifying information about the student will be futile. Further, it

appears to this office that the district has made a determination that all responsive student records, responsive to request number two, are excepted from disclosure under FERPA.² We conclude that since the identity of the student cannot be adequately protected the entire student records are protected under FERPA, pursuant to sections 552.026 and 552.114 of the Government Code and may not be released to the requestor.

Furthermore, although the requestor represents a teacher in a grievance proceeding, we do not believe that he has a special right of access to these education records. Federal regulations governing the release of education records provide:

(a) An educational agency or institution *may* disclose personally identifiable information from an education record of a student without the consent [of the student or the student's parent] if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including *teachers*, within the agency or institution *whom the agency or institution has determined to have legitimate educational interests*.

....

(b) This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraph[] (a)(1) . . . of this section.

34 C.F.R. § 99.31 (emphasis added).

Thus, it is for the district to decide whether the requestor representing a teacher has a "legitimate educational interest" in access to the student records at issue. Moreover, the above-quoted language indicates that the district is permitted but not required to disclose the student records to a requestor who is seeking the records for a "legitimate educational interest." If the district has previously established a policy or promulgated a regulation on this matter, its action in this case must be consistent with the policy or regulation.³ If 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 Family Policy and Regulations Office. *See* Open Records Decision No. 634 (1995) at 4 n.6, 8 n.9.

²Although, you did not submit to this office for review copies of education records, we will rule on your request for a decision. *See* Open Records Decision No. 634 (1995) at 10 (if district does not make 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).

³It does not appear that the parents of the student, as applicable, have given written consent to the release of the education records. *See* 20 U.S.C. § 1232g(b)(1), (d).

We are resolving this matter with an informal letter ruling rather than with a published open records decision.⁴ 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,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 106277

cc: Mr. Homero Basaldua
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⁴As we resolve your request under sections 552.026 and 552.114 of the Government Code, we need not address your arguments pursuant to common-law and constitutional privacy, as incorporated into section 552.101 of the Government Code.