Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 9, 1997

Mr. D. Craig Wood
Jeffers & Banack, Inc.
Trinity Plaza II
745 East Mulberry, Suite 900
San Antonio, Texas 78212-3166

OR97-1547

Dear Mr. Wood:

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# 106948.

Lackland Independent School District (the "district"), whom you represent, received a request for information relating to an investigation of a teacher. One request is from the teacher under investigation and the other request is from a parent representative. You have released a document entitled "Investigative Report on 1997 Senior Class Parent Complaints" and other documents regarding district policies. You assert that the remaining information is excepted from disclosure pursuant to sections 552.101 and 552.114. You claim that releasing the records implicates the common-law and false-light privacy interests of the parties involved under section 552.101 of the Government Code.

We note at the outset that false-light privacy is not an actionable tort in Texas. *See Cain v. Hearst Corp.*, 878 S.W.2d 577, 579 (Tex. 1994). A governmental body may, therefore, not withhold information under section 552.101 of the Government Code merely because it might place a person in a false light. *See* Open Records Decision No. 579 (1990).

Section 552.101 excepts from disclosure information that is confidential by law, and includes the common-law right to privacy. Information is excepted from disclosure under common-law privacy if it is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. Of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977). In *Morales v. Ellen,* 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the El Paso Court of Appeals addressed the applicability of the common-law privacy doctrine to files of an investigation of

allegations of sexual harassment. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* at 525.

We believe that the holding in the *Ellen* case applies to some of the records submitted for our review. The document you have released provides an adequate summary regarding the allegations of inappropriate behavior. The remaining information that consists of statements of the students or parents regarding the allegations of inappropriate behavior must be withheld to protect the common-law privacy interests of the alleged victims and witnesses.

Some of the remaining records not otherwise excepted from disclosure under common-law privacy are "education records" 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. "Education records" are records that (1) contain information directly related to a student; and (2) 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). FERPA denies federal funds to an educational agency or institution that has a policy or practice of releasing a minor student's education records without the proper consent of a minor student's parents. *Id.* Some of the records submitted to this office contain information concerning minor students. We have marked the type of information that must be withheld under FERPA, unless the district receives the proper consent to release the information.

FERPA also denies federal funds to an educational agency or institution if it has a policy of denying parents the right to inspect and review the "education records" of their children. 20 U.S.C. § 1232(g). One of the requestors is a parent of one of the students involved in the investigation. Information concerning this student must be released to the parent pursuant to the FERPA access provisions. However, information which identifies this student may not be disclosed to the teacher.

An educational institution or agency may release "directory information" to the public if the educational institution or agency complies with certain procedures. *See id.* § 1232g(a)(5)(A); *see also id.* § 1232g(a)(5)(B) (providing notice requirements that afford affected students right to object to release of directory information relating to them). Some of the information we have marked is "directory information" under FERPA. After complying with the FERPA requirements for the release of directory information, the district should release it to the requestors. *See* Open Records Decision No. 242 (1980).

The remaining information which is not an educational record, directory information, or information excepted from disclosure on the basis of common-law privacy must be released.[1]

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,

Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 106948

Enclosures: Submitted documents

cc: Mr. David Merrell
Ms. Darlene S. Cox
San Antonio Teachers Council
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(w/o enclosures)

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[1]In Open Records Decision No. 634 (1995), this office concluded that 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.