



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 20, 1997

Ms. Deborah L. McGregory
Attorney & Counselor at Law
P.O. Box 1467
Sherman, Texas 75091-1467

OR97-2335

Dear Ms. McGregory:

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# 110352.

The Van Alstyne Independent School District (the "district"), which you represent, received two open records requests from the same individual for certain district records. The first request is for certain attorney billing statements, while the second request is for a faxed communication from the district superintendent to the district's attorney. The district has released the requested billing statements except for certain portions, which you contend are excepted from required public disclosure pursuant to the attorney-client privilege and as confidential student information. You also contend that the requested faxed communication may be withheld in its entirety pursuant to the attorney-client privilege.

Section 552.107(1) of the Government Code protects information "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." *See* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and client confidences. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. *See also* Open Records Decision No. 589 (1991) (protected information in attorney billing statements) *overruling to extent of conflict* Open Records Decision No. 304 (1982).

After reviewing the information you seek to withhold pursuant to section 552.107(1), we generally agree that the information you have marked in the attorney billing statements

constitutes privileged communications and thus comes within the protection of section 552.107(1). A few of the entries, however, do not reveal the substance of the attorney-client communications, but rather describe general areas of concern, the release of which would not constitute a breach of the attorney-client privilege. We have marked the information in the billing statements the district may withhold pursuant to section 552.107(1). On the other hand, we agree that the requested faxed communication may be withheld in its entirety pursuant to the attorney-client privilege.

We next discuss the student information you seek to withhold. Section 552.026 of the Government Code provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). When a student has attained the age of eighteen years or is attending an institution of postsecondary education, the student holds the rights accorded by Congress to inspect these records. 20 U.S.C. § 1232g(d). "Education records" means those records that contain information directly related to a student and 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).

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). For purposes of FERPA, the records at issue constitute "education records" only to the extent that they contain information about identifiable students. Consequently, the district must withhold those portions of the records that identify students unless you receive permission to release the information from the parent of the student or from the student himself if qualified to do so as specified above. We have marked those portions of the records that must be withheld in accordance with FERPA.

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,



Kay Hastings
Assistant Attorney General
Open Records Division

KHH/RWP/rho

Ref.: ID# 110352

Enclosures: Marked documents

cc: Mr. Charles D. Macklin
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(w/o enclosures)

