



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 8, 1998

Mr. Jeffrey J. Horner
Bracewell & Patterson, L.L.P.
South Tower Pennzoil Place
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR98-1612

Dear Mr. Horner:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116557.

Brazosport Independent School District (the "district"), which you represent, received a request for "the documentation from the 1997 hearings involving cheerleader tryouts." You submitted to this office documents that appear to be transcripts from closed executive sessions of the board of trustees. You also submitted an "excerpt" from a public school board meeting, several handouts given to cheerleaders, and other records that identify a student and her parents. You assert that "the information relating to students may be exempt from disclosure" as student records.

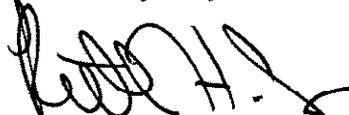
We note initially that the submitted excerpt from the public meeting is a public document that may not be withheld from disclosure. Open Records Decision No. 221 (1979) at 1 ("official records of the public proceedings of a governmental body are among the most open of records"). The submitted transcripts appear to be transcripts of closed sessions held under section 551.082 of the Government Code, which provides that the board of trustees may hold a closed session to consider student disciplinary matters. Section 552.101 of the Government Code exempts from disclosure under the Open Records Act "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 551.146 of the Government Code provides that it is a criminal offense to disclose to a member of the public an audiotape recording of a closed meeting. An audiotape recording of a closed meeting is available for public inspection and copying only under a court order. Gov't Code § 551.104; Open Records Decision No. 495 (1988) at 4 (audiotape recordings of closed meetings are confidential unless a court rules otherwise). Section 551.146, in conjunction with section 552.101, protects a transcript of the proceedings of a

closed meeting from public disclosure under the Open Meetings Act. Thus, the transcripts of the closed meetings may not be disclosed pursuant to this request for information.¹

We note that the district may withhold from disclosure information that is protected by FERPA without the necessity of requesting a decision from this office. Open Records Decision No. 634 (1995). However, as you have sought a decision from this office, we will address your arguments against disclosing the remaining records at issue. Section 552.026 of the Government Code exempts from disclosure educational records unless released in conformity with FERPA. FERPA provides that federal funding shall not be made available to "any educational agency or institution which has a policy or practice of permitting the release of educational records" of students without the written consent of the parents of a minor student. 20 U.S.C. § 1232g(b)(1). Education records are those records that "contain information directly related to a student and are maintained by an educational agency or institution." *Id.* § 1232g(a)(4)(A). Generally, only information which would serve to identify students is excepted from disclosure under FERPA. Open Records Decision No 332 (1982) at 3. We have marked the remaining records at issue that are protected under FERPA. The other records, which consist of handouts given generally to cheerleaders and that do not identify any student or parent, must be released.

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,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

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¹ We note that you do not ask, nor do we address, whether section 551.146 of the Government Code conflicts with section 7.057(c) of the Education Code, which provides that the appeal review be based on the record developed by the district, and section 157.074 of title 19 of Texas Administrative Code, which provides that the school district must file a record of the proceedings with its answer in an appeal. Nor do we address in this ruling whether section 551.146 conflicts with the provisions of the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g that restrict access to education records but also provide that parents of minor students or students who are adults must be given access to student education records.

Ref: ID# 116557

Enclosures: Submitted documents

cc: Mr. James D. Davis
327 Timbercreek Drive
Lake Jackson, Texas 77566
(w/o enclosures)