



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 27, 1998

Mr. Miles T. Bradshaw
Assistant General Counsel
Houston Independent School District
Hattie Mae White Administration Bldg.
3830 Richmond Avenue
Houston, Texas 77027-5838

OR98-1771

Dear Mr. Bradshaw:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 116830.

The Houston Independent School District (the "district") received two requests for information regarding special education lawsuits. You assert that information responsive to the requests is excepted from disclosure pursuant to section 154.073 of the Civil Practice and Remedies Code in conjunction with section 552.101 of the Government Code, which provides that information is protected from disclosure if it is confidential by law. You also assert that the records are protected from disclosure under section 552.101 of the Government Code in conjunction with federal law, and also sections 552.026, 552.107, 552.111, and 552.114 of the Government Code. Additionally, you ask if a requestor may review a record that contains both public and confidential information, or if the district is required to provide a redacted copy.

One requestor asked "to view all records of lawsuits filed in and against HISD in special education during the 1995-96 school year." You indicate that the responsive records encompass the attorneys' entire case files for these lawsuits, and you cite to Open Records Decision No. 647 (1996). It is our understanding that you assert section 552.111 for the litigation files in their entirety. Section 552.111 provides an exemption for information "that would not be available by law to a party in litigation" with the governmental body. In Open Records Decision No. 647 (1996) at 5, this office determined that if a requestor asks for an attorney's entire file regarding particular litigation, such a request may be denied under section 552.111 based on the Texas Supreme Court's holding in *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458 (Tex. 1993). In *National Union*, the court held that a request for an attorney's entire litigation file is "objectionable under the attorney work product exception from discovery." *Id.* 863 S.W.2d 458, 461. We agree that, in this situation, the information requested in this particular request may be withheld from

disclosure under section 552.111.¹ We note, however, that a request that seeks specific documents or categories of documents rather than an attorney's entire case file does not necessarily implicate the attorney work product exemption.² Open Records Decision No. 647 (1996) at 5.

We next address your arguments concerning the other request for information. This other request is for copies "of all lawsuits filed in and against HISD in special education and settlement amounts for the 96-97 school fiscal year."³ You submitted to this office documents responsive to the request, which include settlement agreements. You contend that the settlement agreements are drafted and executed during the mediation process and thus are protected from disclosure by section 154.073 of the Civil Practice and Remedies Code in conjunction with section 552.101 of the Government Code. Please note that this office recently issued Open Records Decision No. 658 (1998), which determined that section 154.073 does not except from disclosure a governmental body's mediated final settlement agreement. A copy of that decision is enclosed. Thus, the settlement agreements at issue may not be withheld from disclosure under section 154.073 in conjunction with section 552.101.

You also contend that some of the information at issue is protected from disclosure under sections 552.026 and 552.114, and also under the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g. We note initially that the district may withhold from disclosure information that is protected by FERPA and section 552.114 without the necessity of requesting a decision from this office.⁴ Open Records Decision No. 634 (1995). However, as you have sought a decision from this office, we will address your arguments against disclosure.

¹We note that you may not allow a requestor to view confidential information. Gov't Code 552.352. The governmental body may provide copies of records with the confidential information redacted. Open Records Decision No. 606 (1992).

²Since the documents may be withheld from disclosure under section 552.111, this resolves your section 552.107 argument as well.

³We note that this requestor seeks specific documents from the litigation files rather than all of the records in the attorneys' case files.

⁴Section 552.114 requires that "information in an student record at an educational institution funded wholly or partly by state revenue" must be withheld, but may be made available on the request of the student or other authorized person. Section 552.026 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.

The term "student record" in section 552.114 has been generally construed to be the equivalent of "education records." See generally Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990), 477 (1987), 332 (1982).

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. You explain that the records at issue are nearly identical to the records at issue in Open Records Letter No. 98-0177 (1998) and ask if the district can rely upon that ruling as a guide to withholding the FERPA information that is at issue. We agree that you must withhold the FERPA information in these records as outlined in Open Records Letter No. 98-0177 (1998). The remaining information 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

RHS/ch

Ref: ID# 116830

Enclosures: Submitted documents
Open Records Letter No. 98-0177 (1998)
Open Records Decision No. 658 (1998)

cc: Ms. Dorothy Jones
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(w/o Submitted documents)

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