



March 25, 1999

Mr. Jeffrey Horner
Bracewell & Patterson
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR99-0826

Dear Mr. Horner:

You represent the Deer Park Independent School District (the "school district"). On behalf of the school 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# 123694.

The school district received an open records request for "any student files that you have in your possession regarding [a specified individual], for any and all years that he was a student at any level," in the school district.¹ The requestor apparently represents a client in a sexual abuse claim against the school district. In response to the request, you submit to this office for review a copy of the "directory" information, which has been released to the requestor, and an "Itemized List of Records." You contend, however, that the responsive 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). We have considered the exceptions and arguments you raise and reviewed the submitted information.

You claim that the requested student 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*

¹We note that the requestor has asked for the records of Derek Blankenship, however, in your letter and the submissions the records pertain to David Blankenship. We assume that any difference in the names is merely due to a clerical error on the part of the parties to the request.

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 organization²

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) (footnote added); *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).

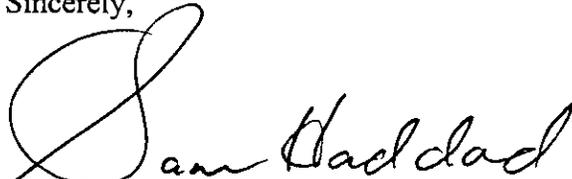
It appears to this office that the school district has made a determination that all responsive student records, referenced in the “Itemized List of Records,” are excepted from disclosure under FERPA.³ We conclude that since the identity of the student cannot be adequately protected the entire student 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.

²It 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).

³Although, 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 at 10 (1995) (if school district does not make a determination but seeks determination from this office, school district must first obtain parental consent to disclose personally identifiable information or must edit records to protect personally identifiable information).

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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad

Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 123694

cc: Mr. Bob Wicoff
Attorney at Law
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(w/o enclosures)