



August 26, 1999

Ms. Ylise Y. Janssen
Staff Attorney
Corpus Christi Independent School District
P. O. Box 110
Corpus Christi, Texas 78403-0110

OR99-2411

Dear Ms. Janssen:

You represent the Corpus Christi 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 the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 126840.

The school district received an open records request for "[a]ny documents, memorandum, and/or reports dealing with alleged TAAS irregularities at Kaffie Middle School." In response to the request, you submit to this office for review the information at issue.¹ You contend that the submitted records are excepted from required public disclosure under section 552.101 of the Government Code in conjunction with the informer's privilege and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. We have considered the exception and arguments you have raised and reviewed the submitted information.

Initially, we address your assertion that a portion "of the materials are copyrighted," therefore, you "argue that copies not be made available." A governmental body is not required to furnish copies of copyrighted records; the public may inspect and make copies of such records unassisted by the governmental body, but it assumes the duty and risk of compliance with copyright law. Open Records Decision No. 550 (1990). *See* Open Records Decision No. 505 (1988) (federal law, not Public Information Act, governs right to reproduce copyrighted records).

¹You have also submitted to this office information that apparently was sent for informational purposes only. In this ruling, we do not address the public disclosure of that information.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Texas courts long have recognized the informer’s privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Public Information Act. Open Records Decision No. 549 at 4 (1990). For information to come under the protection of the informer’s privilege, the information must relate to a violation of a civil or criminal statute. *See* Open Records Decision Nos. 515 at 2-5 (1988), 391 (1983). When information does not describe conduct that violates the law, the informer’s privilege does not apply. Open Records Decision Nos. 515 (1988), 191 (1978). Also, once the identity of the informer is known to the subject of the communication, the exception is no longer applicable. Open Records Decision No. 202 at 2 (1978). Based on your representation and the records at issue, we conclude that the informer’s privilege is not implicated in the pending request for information.

Section 552.101 encompasses information protected by other statutes. 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). “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. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. 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, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

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 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.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). We have marked the types of information that may reveal or tend to reveal information about a student that must be withheld pursuant to FERPA. All other 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.

Sincerely,

A handwritten signature in cursive script that reads "Sam Haddad". The signature is written in black ink and is positioned above the typed name.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 126840

Encl. Submitted documents

cc: Mr. Jonathan Osborne
Corpus Christi Caller-Times
P. O. Box 9136
Corpus Christi, Texas 78469
(w/o enclosures)