



January 6, 2000

Ms. Lisa A. Brown
Bracewell & Patterson, L.L.P.
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR2000-0048

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#130966.

The Huffman Independent School District (the "district"), which you represent, received a request for the "complete records of all invoices from Bracewell & Patterson subsequent to May 31, 1999, covering services provided May 15, 1999 to date." In response to the request, you have supplied our office with two bill summaries, dated August 30, 1999 and September 30, 1999. You claim that portions of the bill summaries are excepted from disclosure under sections 552.101, 552.103, 552.107, 552.114, and 552.026 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, we address your section 552.103 claim. Section 552.022(a)(16) of the Government Code states that information in an attorney fee bill is not excepted from disclosure under the Public Information Act unless it is expressly confidential under other law or privileged under the attorney-client privilege. Section 552.103 is not other law that makes the information confidential; therefore, you may not withhold the information under section 552.103.

Next, we address whether the attorney-client privilege applies to the requested information. Section 552.107(1) excepts information from disclosure if:

it is 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.

Gov't Code § 552.107(1). In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual

information. *Id.* The attorney general explicitly found that a governmental body may withhold information in an attorney fee bill only to the extent that the information reveals client confidences or the attorney's legal advice. *See* Open Records Decision No. 589 (1991). Moreover, in Open Records Decision No. 589, the attorney general determined that the "attorney-client privilege" exception did not protect a requested list of "phone calls and conferences regarding a particular matter" or indications that an attorney had reviewed documents relevant to the attorney's representation of the government body. We find that portions of the information contained in the requested bill summaries are privileged under section 552.107(1). We have marked the information that you may withhold under section 552.107(1).

Finally, we address whether the bill summaries include information that is confidential by law pursuant to sections 552.114 and 552.026 of the Government Code in conjunction with the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). 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.

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 agree that you must withhold only the portions of the bill summaries which may reveal or tend to reveal information about a student pursuant to FERPA.¹ The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

¹We note that the student's or parent's entire name should be redacted, including first initials.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/KSK/ljp

Ref: ID# 130966

Encl. Submitted documents

cc: Ms. Sheila McGee
819 Corydon
Huffman, Texas 77336
(w/o enclosures)