



March 17, 2000

Ms. Laura E. Enriquez-Guerra
Records Management Specialist
Ysleta Independent School District
9600 Sims Drive
El Paso, Texas 79925-7225

OR2000-1072

Dear Ms. Enriquez-Guerra:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133500.

The Ysleta Independent School District (the "district") received a request for "[a]ll documentation, memoranda, letters, reports, allegations, complaints, by the [district] of the investigation of allegations made against" a named individual by two named individuals, "on or about November, 1999." You have provided for our review representative samples of information that is responsive to the request, marked as exhibits "B," "C," and "D."¹ You assert this information is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹Your request for a decision refers to student statements and student enrollment cards as information responsive to the request, but you have provided for our review only one student statement and one student enrollment card. We therefore assume the exhibits you have provided constitute representative samples of the responsive information. *See* Gov't Code § 552.301(e)(1)(D) (a governmental body may submit to this office for review representative samples of the information if a voluminous amount of information was requested). In reaching our conclusion here, we thus further assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988); 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. Exhibit “C” consists of correspondence from a physician which includes a diagnosis of the patient. We believe release of this information is governed by the Medical Practice Act, found at Subtitle B of Title 3 of the Occupations Code. Section 159.002(b) states:

A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

See Occ. Code § 159.002(b). Sections 159.003 and 159.004 provide for exceptions to this confidentiality provision, which generally do not appear to apply here. However, section 159.004(5) excepts information otherwise subject to this provision where the district has obtained written consent for release of the information from the patient or the patient’s authorized representative. *See* Occ. Code §§ 159.004(5), 159.005. Thus, unless the district receives proper written consent to release exhibit “C” to the requestor, we determine you must withhold this information in its entirety.

You assert some of the information is excepted from disclosure under the federal Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. § 1232g, and sections 552.026 and 552.114 of the Government Code. In Open Records Decision No. 634 (1995), this office concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by section 552.026 without the necessity of requesting a decision from this office, 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.² Exhibit “B” is a written statement given by a student. You aver that this information, in its entirety, is excepted from disclosure under FERPA. We do not agree that the entirety of a statement taken from a student is *necessarily* made confidential by FERPA. Rather, 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). We have marked for redaction certain information in exhibit “B” that we believe is made confidential by FERPA. We determine you must not release this marked information, but that the remainder of the information in the exhibit is subject to release. Exhibit “D” is a student enrollment card. Because virtually all of the information

²If you have further questions as to the applicability of FERPA to information that is the subject of a request under the Act, you may consult with the United States Department of Education’s Family Policy Compliance Office. *See* Open Records Decision No. 634 at 4 nn.6, 8 (1995).

in exhibit "D" would identify the student, we find the entire document is made confidential by FERPA and therefore must not be released.

In summary, absent a written consent for release of the information from the patient or the patient's authorized representative, you must withhold exhibit "C" in its entirety. You must also withhold exhibit "D" in its entirety. You must redact the marked information from exhibit "B." Other than the marked information, exhibit "B" must be released.

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.

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).

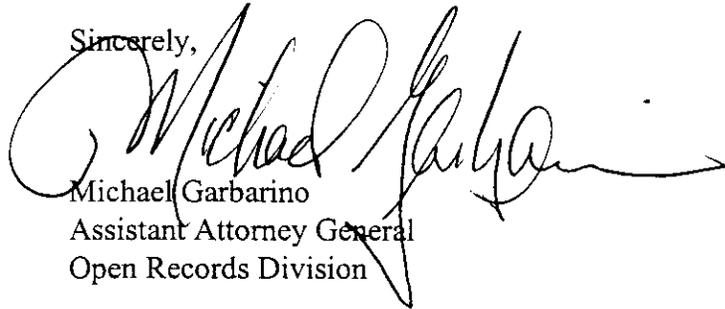
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Department 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,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/ch

Ref: ID# 133500

Encl. Submitted documents

cc: Ms. Lucille Zavala, J.D.
Attorney at Law
528 East Overland, Suite 201
El Paso, Texas 79901
(w/o enclosures)