



May 2, 2000

Mr. Gustavo L. Acevedo
Attorney at Law
1100 Northwest Loop 410, Suite 700
San Antonio, Texas 78213

OR2000-1694

Dear Mr. Acevedo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135117.

The San Benito Consolidated Independent School District (the "district"), which you represent, received a request for a specific video tape. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, 552.108, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that sections 552.026 and 552.114 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA") except the video tape from public disclosure.

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.

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).

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). This office defines “student records” to include, but not necessarily limited to, reports of disciplinary actions. *See* Open Records Decision No. 612 at 2 (1992). You state that the video tape was taken by the district’s security surveillance system and is maintained by the district for use in disciplinary proceedings related to the fight at issue. You state the district does not have the capability to redact the students’ faces from what is essentially a mob scene. Based on your assertions and our review of the video tape, we conclude that the video tape is a student record for the purposes of FERPA. Moreover, we find that the video tape must be withheld from public disclosure as students’ faces cannot be redacted so as to avoid personally identifying a particular student. Consequently, the district must withhold the tape from public disclosure under sections 552.026 and 552.114 in conjunction with FERPA.

Because we were able to make a determination under sections 552.026 and 552.114, it is not necessary to address your section 552.101 and 552.108 claims. 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.

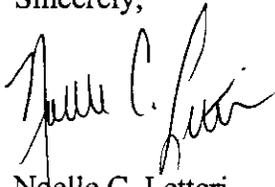
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge 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,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

ncl/nc

Ref: ID# 135117

Encl. Submitted documents

cc: Mr. John Hand
Texas State Teacher's Association
316 West 12th Street
Austin, Texas 78701
(w/o enclosures)