



May 23, 2000

Mr. Samuel S. Allen
Jackson Walker, L.L.P.
225 West Beauregard Avenue
San Angelo, Texas 76903

OR2000-2028

Dear Mr. Allen:

You ask 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# 136466.

The San Angelo Independent School District (the "district"), which you represent, received a request for a variety of information relating to the requestor, his child, who is a student in the district, and related matters. You have submitted information that the district deems to be responsive to the request. You claim that the submitted information is excepted from disclosure under section 552.131 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted. We also received and have reviewed comments submitted by the requestor.

Section 552.131 of the Act, as added to chapter 552 of the Government Code by the Seventy-sixth Legislature, provides as follows:

- (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].
- (c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.131.¹ In support of the district's claim under section 552.131, you assert that the submitted information substantially reveals the identity of an informer. You also state that the information in question pertains to a "possible violation of . . . law[.]" You contend that "[i]t is clearly within the specific purpose of [section] 552.131 to withhold the information to prevent reprisal or illegal action by persons mentioned in [it]." You do not direct our attention, however, to any specific civil, criminal, or regulatory law that allegedly has been violated. Because the legislature specifically limited the protection of section 552.131 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See also* Gov't Code § 552.301(e)(1)(A). As you have not informed us of any specific law or regulation that is reported to have been violated, we conclude that the submitted information is not excepted from disclosure under section 552.131.

We note, however, that the submitted records contain information that is within the ambit of sections 552.026 and 552.114 of the Act and the federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. Section 552.026 of the Government Code provides as follows:

¹As of the date of this letter ruling, four different sections of the Act were denominated as section 552.131. The section 552.131 that you raise was added to chapter 552 of the Government Code by the Act of May 30, 1999, 76th Leg., R.S., ch. 1335, § 6, 1999 Tex. Gen. Laws 4543, 4545.

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.

Gov't Code § 552.026. 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); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). "Education records" are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). 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 at 3 (1982), 206 at 2 (1978).

Section 552.114 of the Government Code requires the district to withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114 as the equivalent of "education record" information that is subject to FERPA. *See* Open Records Decision No. 634 at 5 (1995).

In this instance, however, the names of the requestor and his child are the only information contained in the submitted records that is protected under section 552.026 in conjunction with FERPA and section 552.114. The requestor, as the parent of the identified student, has a special right of access to information relating to his child. *See* 20 U.S.C. § 1232g(a) (parent or adult student has affirmative right of access to that student's education records). We therefore conclude that the submitted records do not contain any information that is excepted from disclosure under section 552.026 in conjunction with FERPA and section 552.114. In the event, however, that the district receives a request for these same records from another person, the district should resubmit the records and request another ruling.

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.

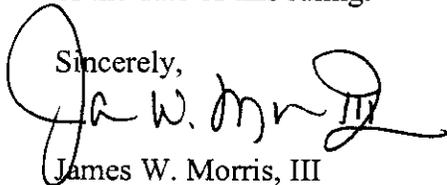
Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/ljp

Ref: ID# 136466

Encl. Submitted documents

cc: Mr. Herman Gomez
P.O. Box 62054
San Angelo, Texas 76906-2054
(w/o enclosures)