



May 23, 2000

Ms. Martha Bailey Whatley  
Attorney  
Fort Worth Independent School District  
100 North. University Drive  
Fort Worth, Texas 76107

OR2000-2047

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136194.

The Fort Worth Independent School District (the “district”) received a written request for, among other things, records containing allegations of misconduct by a named Fort Worth police officer who worked on the campus of Dunbar High School and the reasons for that officer’s reassignment. You have submitted to this office as responsive to the request four memoranda prepared by the high school principal regarding the police officer. You contend that the four memoranda are excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup>

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You first contend that because the information at issue pertains to a Fort Worth police officer, the information is made confidential under section 143.089 of the Local Government Code, which governs the release of personnel information pertaining to police officers and fire fighters in certain civil service cities. This provision of the Local Government Code pertains only to records in the hands of the city’s civil service commission or the city’s police department; it does not govern access to records held by any other governmental entity. See Loc. Gov. Code § 143.002; see also *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.—Austin 1993, writ denied). Consequently, the provisions of section 143.089 do not

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<sup>1</sup>We note that, in accordance with the practice established by this office in Open Records Decision No. 634 (1995), you have redacted from one of the documents the identity of a student to protect his privacy interests under the federal Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. § 1232g. We believe that another memorandum, dated January 14, 2000, may also identify a student.

apply to the four memoranda held by the district and they may not be withheld under section 143.089 of the Local Government Code.

You also contend that the requested information is excepted from public disclosure by common law privacy as incorporated into section 552.101. Specifically, you contend that the release of the information will invade the privacy of individuals by placing them in a false light. The Texas Supreme Court has held that Texas law does not recognize the tort of false light invasion of privacy. *See Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994). Consequently, the district may not withhold any portion of the memoranda at issue merely because they contain information that may be untrue.<sup>2</sup> Because you have raised no applicable exception to required public disclosure, the district must release the four memoranda in their entirety, except for any student identifying information contained therein. *See* 20 U.S.C. § 1232g; Gov't Code §§ 552.023, .114.

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.

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<sup>2</sup>If, however, portions of the information contained in the memoranda are in fact inaccurate or untrue, there is no reason that the district may not also release, along with the requested documents, other supplemental information that explains why and to what extent the information is inaccurate or that otherwise clarifies the information contained in these records.

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 "Rose-Michel Munguía". The signature is fluid and cursive, written over a faint circular stamp or watermark.

Rose-Michel Munguía  
Assistant Attorney General  
Open Records Division

RMM/RWP/nc

Ref: ID# 136194

Encl. Submitted documents

cc: Mr. Mark Kirkland  
1732 Liberty  
Fort Worth, Texas 76105  
(w/o enclosures)