



July 11, 2000

Mr. Clay T. Grover
Feldman & Rogers, L.L.P.
5718 Westheimer, Suite 1200
Houston, Texas 77057

OR2000-2584

Dear Mr. Grover:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 136954.

The Klein Independent School District (the "district"), which you represent, received a request for several categories of information. You indicate that you have released most of the requested information, but that you seek to withhold information responsive to the request for "all documents showing how many grades between 95 and 100 were given for any grading period to any child of any current Board of Trustees member attending high school in [the district]." You assert that the district is prohibited from disclosing this information under Section 1232g of title 20 of the United States Code, the Family Educational Rights and Privacy Act of 1974 ("FERPA"). You contend that this information is excepted from public disclosure by sections 552.101, 552.026, and 552.114 of the Government Code. You have provided this information to this office for our review. Several interested parties have also submitted comments regarding this request. We have considered the exceptions you claim and reviewed the submitted information and comments.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g, 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).

Government Code section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 of the Government Code states that information contained in education records of an educational agency or institution are not subject to public disclosure except in conformity with FERPA. This office generally applies the same analysis under FERPA, section 552.026 and section 552.114. *See e.g.* 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 section 552.026 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). For example, all handwritten documents created by students must be withheld since this information would tend to identify particular students. *See* Open Records Decision No. 224 (1979).

You relate that, in this case the grade information sought relates to a very small number of known students and that the grade information can easily be linked to specific students. Based on our review of the submitted information and your argument we agree. We conclude that the requested information would tend to personally identify particular students. This information must therefore be withheld under FERPA and sections 552.026 and 552.114 of the Government Code.

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/nc

Ref: ID# 136954

Encl Submitted documents

cc: Mr. Michael P. Canter
16623 Aldenham Place
Klein, TX 77379
(w/o enclosures)