Office of the Attorney General · State of Texas
John Cornyn
July 21, 2000

Mr. Joe De Los Santos
Walsh, Anderson, Brown, Schulze,
& Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2000-2750

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 137293.

The Riviera Independent School District (the "district"), which you represent, received a request for various information relating to the population of Riviera Kaufer High School. You claim that the requested information is excepted from disclosure under Government Code sections 552.026, 552.101, and 552.114, and pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(g). You have submitted the responsive information for our review. We have considered the exceptions you claim and reviewed the submitted information.

You claim that the requested documents are educational records. 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 of the government Code 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 of the Government Code 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.

Section 552.114(a) of the Government Code requires that the district withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Further, section 552.026 provides that "chapter [552] does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA]." This office generally applies the same analysis under section 552.114 and FERPA.

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" are 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. *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 (1982), 206 (1978). Unless the information personally identifies particular students, it is not protected from disclosure under FERPA.

In the instant request, the requestor has asked for the following information:

> Total population of Riviera Kaufer High School for the past three (3) academic years including the present academic year. Please break down the information by academic year. Include Gender, Ethnic Origin/Race, the number of students enrolled in Mrs. Leyba Spanish II, those who are Passing/Failing or Passed/Failed or Dropped the class. Indicate their parent School District[,] i.e., Ricardo, Riviera, Sarita.

We conclude that the submitted documents contain information directly related to students. Therefore, the documents are education records under FERPA. You make the following arguments against the release of the information:

> In this case, the School District believes that the information requested concerning the gender, ethnic origin, race, the number of students enrolled who are passing/failing, passed/failed or dropped, in Mrs. Leyba's Spanish II class constitutes "personally identifiable" student information. Given the size of our small community (roughly 2,000), the size of her classes, and the particularity of the information, the School District believes that releasing such information would make the identities of these students easily traceable . . . .

We agree that certain students could be personally identified from the data presented in a portion of the submitted information. Specifically, this portion is that data representing the enrollees of Mrs. Leyba's Spanish II class. Therefore, this portion of the information must not be released to the requestor. The remaining information consisting of the total population of the high school, however, does not personally identify any particular student and, thus, must be released. We have marked for redaction the information we believe is made confidential by FERPA. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and 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.

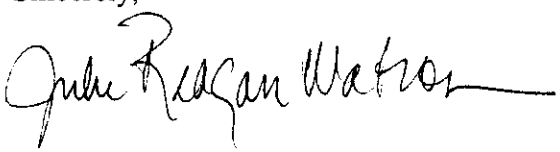
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge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



Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/pr

Ref: ID# 137293

Encl. Submitted documents

cc: Mr. Robert Zavala
P.O. Box 1069
Kingsville, Texas 78379
(w/o enclosures)