



August 17, 2000

Mr. Juan Gonzales  
Law Office Of Juan E. Gonzalez  
420 West University Drive  
Edinburg, Texas 78539

OR2000-3147

Dear Mr. Gonzales:

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# 138187.

The Mercedes Independent School District (the "district"), which you represent, received a request for "the names and addresses of the '53 person citizens committee.'" You claim that the requested information is excepted from disclosure under Government Code sections 552.026 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 have failed to submit to this office a copy of the written request for information. Pursuant to 552.301(e)(2), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. Pursuant to section 552.302 of the Government Code, if a governmental body does not request an attorney general decision as provided by section 552.301, the requested information requested is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Your claims that portions of the information are education records excepted from disclosure pursuant to sections 552.026 and 552.114 and under FERPA may provide such a compelling reason. *See, e.g.*, Open Records Decision No. 150 (1977) ("compelling reason" for withholding information is if information is made confidential by another source of law or affects third party interests).

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.

FERPA defines "directory information" as follows:

the student's name, address, telephone listing, date and place of birth, major field of study, *participation in officially recognized activities* and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

20 U.S.C. § 1232g(a)(5)(A) (emphasis added). The interpretive federal regulation provides that directory information "includes, but is not limited to" these items of information. *See* 34 C.F.R. § 99.3. The term generally "means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if

disclosed.” *Id.* It does not appear that the disclosure of the student’s names and addresses would be harmful or an invasion of privacy. Thus, we believe that the submitted information constitutes directory information for purposes of FERPA.

FERPA permits an educational agency or institution to release directory information in accordance with federal notice requirements without subjecting itself to the sanction of loss of federal funds. *See* 20 U.S.C. § 1232g(a)(5)(B), (b)(1); Open Records Decision No. 634 at 2 n.2 (1995). Section 1232g(a)(5)(B) provides as follows:

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent’s prior consent.

20 U.S.C. § 1232g(a)(5)(B). Thus, if the district has given notice and obtained consent to the disclosure of the information in question here, in accordance with section 1232g(a)(5)(B) of the federal law, the district must release the requested information. Conversely, if the district has not obtained consent to the disclosure of the requested information in accordance with the federal law, then that information is confidential under FERPA and must not be disclosed.

The submitted information additionally contains the names and addresses of district employees. Government Code section 552.117(1) excepts from disclosure the home addresses, telephone numbers, social security numbers, and family information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 allows you to withhold this information if the official or employee requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the individual made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989).

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(c).

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# 138187

Encl. Submitted documents

cc: Mr. David Garza  
2190 West Highway 83  
Mercedes, Texas 78570  
(w/o enclosures)