



December 20, 2000

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OR2000-4790

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# 141858.

The Uvalde Independent School District ("UISD") received a request for all documentation relating to a student complaint against the requestor's son, including names of the individuals who made the allegations and their statements, the names of all individuals interviewed regarding the allegation, and the names of any individuals present during the interviews. You indicate that you have released some of the responsive information, but contend that the remainder of the information consists of student information that is excepted from disclosure under sections 552.101, 552.026, 552.114, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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 the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and excepted from required public disclosure by sections 552.026 and 552.101 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. "Education records" under FERPA are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A); *see* Open Records Decision Nos. 462 at 15 (1987), 447 at 2-3 (1986).

Here, you have submitted the requested records for a decision by this office. Because the records relate to a student's allegation of sexual harassment against another student, we find they constitute education records for the purposes of FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). Consequently, FERPA requires UISD to delete information from the documents in the investigative file to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision No. 206 at 2 (1978); *see* Open Records Decision No. 332 at 3 (1982). This identifying information is deemed confidential under FERPA and must be withheld from disclosure. However, parents have a right to inspect the education records of their children. 20 U.S.C. § 1232g(a)(1)(A); *see* Open Records Decision No. 431 (1985) (Public Information Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student). Thus, you must release information identifying the requestor's child to him, but you must withhold information that identifies any other students. We have marked the information contained within the investigative file that qualifies as student identifying information, including the names, addresses and phone numbers, family member information, student identification numbers, and handwritten notes of the other students. *See* 34 C.F.R. § 99.3 (defining personally identifiable information); Open Records Decision No. 224 (1979). Unless otherwise authorized by the parents of these students, this information must be withheld.<sup>1</sup> *See* 20 U.S.C. § 1232g(b)(1); Gov't Code §§ 552.026, .101, .114. The remainder of the information does not qualify as identifying information and may not be withheld under sections 552.026, 552.101, and 552.114.

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).

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<sup>1</sup>Based on this holding, we need not reach your argument under section 552.131 of the Government Code.

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 Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB\er

Ref: ID# 141858

Encl: Submitted documents

cc: Mr. Michael Flores  
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(w/o enclosures)