



December 28, 2000

Mr. Jeffrey D. Roerig
Roerig, Oliveira & Fisher
855 West Price Road, Suite 9
Brownsville, Texas 78520-8766

OR2000-4872

Dear Mr. Roerig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142657.

The Brownsville Independent School District (the "district"), which you represent, received a written request for all documents relating to the grievance filed by a certain district employee regarding an employment matter. You state that much of the requested information has been released to the requestor. You contend, however, that one responsive document is excepted from required public disclosure under section 552.102 of the Government Code and the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.

Section 552.102(a) of the Government Code protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102(a) is designed to protect public employees' personal privacy. The scope of section 552.102(a) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982); *see also* Attorney General Opinion JM-36 (1983). The test for section 552.102(a) protection is the same as that for information protected by common law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App. - Austin 1983, writ ref'd n.r.e.).

The requested information pertains solely to issues arising out of the employment of a public servant, and as such cannot be deemed to be outside the realm of public interest. *See* Open Records Decision No. 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees). Section 552.102 was not intended to protect the type of information at issue here.

We also note that some of the information at issue may be excepted from public disclosure under section 552.117(1) of the Government Code, which requires that the district withhold, among other things, information that reveals whether district employees have family members. Accordingly, the district must redact this type of information from the document at issue, but only if the employee had elected to keep this information confidential in accordance with section 552.024 of the Government Code prior to the district's receipt of the current records request. *See* Open Records Decision No. 530 (1989). If the employee has made such an election, we have marked the information that the district must withhold pursuant to section 552.117(1).

In the event that the employee has not made such an election, we nevertheless conclude that some of the information we have marked must be withheld pursuant to section 552.026 of the Government Code in conjunction with FERPA. *See* Open Records Decision No. 634 (1995). 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 numerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). When a student has attained the age of eighteen years or is attending an institution of postsecondary education, the student holds the rights accorded by Congress to authorize the inspection of these records. 20 U.S.C. § 1232g(d).

"Education records" is defined as 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. 20 U.S.C. § 1232g(a)(4)(A). For purposes of FERPA, the document at issue constitutes "education records" in that it contains information about an identifiable student. However, 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). We have marked the information that the district must withhold because the information would tend to reveal the identity of one of the district's students. None of the remaining information contained in the employee grievance is protected under FERPA.

In summary, we have marked the information that the district must withhold pursuant to FERPA. We have also marked additional information that is excepted from public disclosure under section 552.117(1), provided the employee timely elected to make this information confidential in accordance with section 552.024 of the Government Code. The

district must release to the requestor the remaining information contained in the employee grievance.

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).

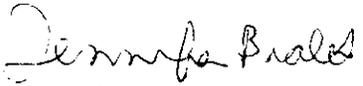
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,

A handwritten signature in cursive script that reads "Jennifer Bialek".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/RWP/seg

Ref: ID# 142657

Encl. Submitted documents

cc: Mr. Melrose E. Huff
Brownsville Herald
1135 East Van Buren
Brownsville, Texas 78520
(w/o enclosures)