



January 19, 2001

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

OR2001-0202

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# 142960.

The Southside Independent School District (the "district"), which you represent, received a request for information relating to sex offenders. You have submitted responsive information that you claim is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that is made confidential by other statutes, such as section 58.007 of the Family Code. Section 58.007 provides for the confidentiality of juvenile law enforcement records and files that relate to conduct that occurred on or after September 1, 1997. *See* Fam. Code § 58.007(c). You do not inform this office that the submitted information is maintained by a law enforcement unit of the district. *See* Educ. Code § 37.081 (authorizing school districts to employ security personnel, commission peace officers, and operate police departments). Accordingly, we do not believe that section 58.007 is applicable to the submitted information. However, even if the submitted documents are maintained by the district's law enforcement unit, we note that section 58.007 does not apply to a record or file relating to a child that is subject to disclosure under chapter 62 of the Code of Criminal Procedure, which governs registration of sex offenders. *See* Fam. Code § 58.007(a); Open Records Decision No. 645 at 6 (1996) (stating that statutory predecessor to chapter 62 "clearly contemplates" that juvenile sex offenders will be subject to its provisions). Thus, we conclude that the information in question is not subject to section 58.007 of the Family Code.

You also claim that the district must withhold the submitted information under sections 552.026, 552.101, and 552.114 of the Government Code 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); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that 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 at 3 (1982), 206 at 2 (1978).

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." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995).

You state that the submitted information pertains to one or more of the district's students and now is maintained or collected by the district. You believe that this information constitutes non-directory personally identifiable student information that the district must withhold. You do not advise us that FERPA authorizes the district to release the information in question. Based on your representations and our review of the submitted information, we conclude that the district must withhold, in accordance with sections 552.026 and 552.114 and FERPA, those portions of the submitted information that would personally identify a particular student. *See* Open Records Decision No. 645 at 8 n.9 (1996) (agreeing that school district must treat juvenile sex offender information that district receives about one of its students as confidential "education record" under FERPA). We have marked the information that the district must withhold. The rest of the submitted information is not excepted from disclosure and must be released.

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).

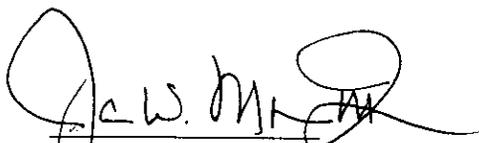
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 black ink, appearing to read 'J.W. Morris, III', written over a horizontal line.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/er

Ref: ID# 142960

Encl: Submitted documents

cc: Mr. Joe Ellis  
Producer, KMOL TV  
1031 Navarro Street  
San Antonio, Texas 78205  
(w/o enclosures)