



January 29, 2001

Mr. Aric J. Garza
Escamilla & Ponceck, Inc.
South Texas Building
603 Navarro Street, Suite 1200
San Antonio, Texas 78205

OR2001-0328

Dear Mr. Garza:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143718.

The Eagle Pass Independent School District (the "district"), which you represent, received a request for information related to the imposition of corporal punishment on a specific student. Specifically, the request was for "documents, incident reports, and other information ... related to my client [the student], this incident, and/or the employee who administered 'the mod. corporal punishment.'" You argue that the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You do not indicate that you have released any responsive information to this requestor. We note that the submitted information apparently does not include the subject employee's entire personnel file. We are of the opinion that information in such a file would be responsive to the request for "documents. . . and other information related to . . . the employee who administered 'the mod. corporal punishment.'" Assuming that you have not previously released such information, note that a governmental body that wishes to withhold requested information must provide to the Attorney General a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the copy, no later than fifteen days after the governmental body receives the written request for information. Gov't Code § 552.301(e). If the governmental body does not comply with the requirements of Government Code section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. We have no basis for finding information that was not submitted to this office is confidential.

If there is information in the subject employee's personnel file which you have not submitted to this office for review, and which you have not released to this requestor, you must release that information pursuant to section 552.302 of the Government Code. If you have such information and believe it to be confidential and that it may not lawfully be released, you must challenge the ruling in court as outlined below. We now address the information which you have provided for our review.

You raise section 552.101 only in conjunction with the Family Educational Rights and Privacy Act of 1974. The Family Educational Rights and Privacy Act of 1974 ("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" means 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. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. 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.

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 agree that the information which you have designated as protected under FERPA must be withheld.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. To secure the protection of section 552.103(a), a governmental body has the burden of providing relevant facts and documents to show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.c.). Further, to be excepted under section 552.103, the information must relate to litigation that is pending or reasonably anticipated on the date that the information was requested. Gov't Code § 552.103(c). To determine that the information relates to the anticipated or pending litigation, we follow the rule that "ordinarily, the words 'related to' mean 'pertaining to,' 'associated with' or 'connected with.'" *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.).

Here, you indicate that the requestor has filed a lawsuit against the district and an employee of the district on behalf of a student, and that this pending lawsuit pertains to the information requested. You have provided a copy of the citation served on the district and the plaintiff's original petition in this lawsuit. From our review of the submitted information, we conclude that this information relates to the pending litigation. However, not all of the submitted information is excepted by section 552.103.

Absent special circumstances, where the opposing party to the anticipated litigation has had access to the records at issue, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Also note that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We note that some of the materials submitted were created after the request for information was received. This information is not responsive to this request and may therefore be withheld.

In conclusion, you must withhold the information marked as subject to FERPA; you need not release the information which we have designated as not responsive to this request; other than the information which has been made available to the opposing party in litigation, you may withhold the remaining information under section 552.103.

As the above discussion resolves the release of all the information submitted as responsive to this request, we do not address your argument raised under section 552.107 of the Government Code.

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

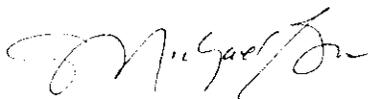
records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these 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(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).

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,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 143718

Encl: Submitted documents

cc: Mr. Tony Renteria
Attorney at Law
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(w/o enclosures)