



March 6, 2001

Mr. Therold Farmer
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 2156
Austin, Texas 78768

OR2001-0861

Dear Mr. Farmer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144761.

The Bronte Independent School District (the "district"), which you represent, received a request for three categories of information related to the alleged misconduct of a named district employee. You inform us that you have released much of the responsive information to the requestor, but claim that a portion of the contents of a two-page letter from the district superintendent to an investigator for the Texas Board of Educator Certification, as well as a portion of a former district employee's college transcript which was redacted from a copy released to the requestor, are excepted from disclosure under sections 552.026, 552.101, 552.102, 552.107, 552.114 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that you have released the former employee's college transcript, with information excepted by section 552.102(b) of the Government Code redacted. Section 552.102(b) excepts information from disclosure if it is a transcript from an institution of higher education maintained in the personnel file of a professional public school employee, except for information pertaining to the degree obtained or the curriculum pursued. Therefore, information in the former employee's college transcript other than that pertaining to the degree obtained and the curriculum pursued may be withheld pursuant to section 552.102(b). We next address your claimed exceptions for the information submitted.

Section 552.107 excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under

the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.* We agree that a portion of the submitted information is excepted under section 552.107. We have marked this information.

We next address your argument under the Family Educational Rights and Privacy Act of 1974 ("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,¹ 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 parents or the student.² 20 U.S.C. §§ 1232g(b), (d). "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).

Section 552.114 of the Act excepts from disclosure "student records" at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. 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.³

¹Personally identifiable information includes, but is not limited to: (a) the student's name; (b) the name of the student's parent or other family member; (c) the address of the student or student's family; (d) a personal identifier, such as the student's social security number or student number; (e) a list of personal characteristics that would make the student's identity easily traceable; or (f) other information that would make the student's identity easily traceable. 34 C.F.R. §99.3 (2000).

²Whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student are only required of or accorded to the student. 20 U.S.C. §§ 1232g(d).

³In 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 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.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student," or "one or both parents of such a student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). In some instances, the content of the documents as a whole makes the identities of the students named in the documents easily traceable, regardless of whether their names are redacted. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information" to include "information that would make the student's identity easily traceable"). This exception may not be used to withhold entire documents, but only information which identifies students or parents. Open Records Decision Nos. 332 (1982). FERPA applies to students who formerly attended an educational institution as well as students presently in attendance. 20 U.S.C. § 1232g(a)(6); 34 C.F.R. § 99.3; Open Records Decisions Nos. 462 (1987); 157, 151 (1977).

Upon review of the submitted information, we believe that information identifying a student or former student of the district, or her parents, must be withheld from the requestor pursuant to FERPA, and sections 552.026 and 552.114 of the Government Code. We have marked the information that must be withheld.

Section 552.131 provides as follows:

- (a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].
- (c) Subsection (b) does not apply:
 - (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or
 - (2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or
 - (3) if the informer planned, initiated, or participated in the possible violation.
- (d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or

prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.131. Because the legislature limited the protection of section 552.131 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You assert that "the laws allegedly violated include Title IX of the General Education Amendments of 1972, 20 U.S.C. § 1681 et. seq., the Texas Penal Code section 39.09, and the Fourteenth Amendment to the U. S. Constitution."

After reviewing your arguments and the information you provided this office, we agree that the district may withhold from disclosure the identities of the employees who reported the alleged violation of law, unless the informers have consented to the release of their identifying information. We have marked the information that may be withheld under section 552.131.

We also note that the submitted document contains information excepted from disclosure under section 552.117 of the Government Code. Section 552.117(1) excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who 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 employee had not made a request for confidentiality under section 552.024 at the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5. We have marked the information that is subject to section 552.117(1).

Finally, we note your argument that section 552.101 of the Government Code, which excepts from disclosure information made confidential by other statutes, in conjunction with section 21.355 of the Education Code, excepts portions of the submitted information that refer to the behavior of the district employee whose actions were investigated, and the district's response to this behavior. Section 21.355 of the Education Code provides, "[a] document evaluating the performance of a teacher or administrator is confidential." This office interpreted this section to apply to any document that evaluates, as that term is

commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also concluded that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of his or her evaluation. *Id.* at 4. Upon review of the submitted information, we do not believe this information constitutes, in whole or in part, an "evaluation" for purposes of section 21.355 of the Education Code. Therefore, the submitted information may not be withheld from the requestor under this section.

To summarize, information in the former employee's college transcript other than that pertaining to the degree obtained and the curriculum pursued may be withheld pursuant to section 552.102(b). Portions of the submitted information may be withheld under sections 552.026 and 552.114 of the Government Code in conjunction with FERPA, as well as under sections 552.107 and 552.131 of the Government Code. We have marked the information accordingly. As we believe these exceptions are dispositive, we need not address your arguments under common law privacy.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 144761

Encl. Submitted documents

cc: Mr. Danny Robbins
Houston Chronicle
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(w/o enclosures)