



April 9, 2001

Mr. Juan E. Gonzalez
Attorney at Law
3110 E. Bus. Hwy. 83
Weslaco, Texas 78596

OR2001-1409

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145826.

The Mercedes Independent School district (the "district"), which you represent, received a request for "the minutes for the parent/student complaint hearing held on Tuesday, November 21, 2000," and the minutes of the requestor's "level III hearing held on the same day." You indicate that the district interpreted this request as a request for a court reporter's transcript of one particular hearing. You notified the requestor of your interpretation of this request. The requestor responded to this notification by reiterating his request for "the minutes for the parent/student complaint hearing held on Tuesday, November 21, 2000," and for the minutes of the requestor's individual complaint hearing held the same day. You have indicated that there is a court reporter's transcript of a meeting, which you evidently deem responsive to the request. You do not indicate whether the district has any other materials which are responsive to the request, which specifically seeks "minutes" of two specified hearings. *See* Open Records Decision No. 561 at 8 (1990) (governmental body must make good faith effort to relate a request to information that it holds).

You have not submitted any responsive information to this office for review. 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 business days after the governmental body receives the written request for information. Gov't Code § 552.301(e)(1)(D). 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. This office has long held that a compelling reason sufficient to overcome the section 552.302 presumption of openness exists where the information is confidential by law. *See, e.g.*, Open Records Decision No. 150 (1977).

You indicate that the district's Board of Trustees (the "board") held a regular meeting on November 21, 2000 where the board went into executive session and conducted Level III grievance hearings. You imply, but you do not affirmatively represent, that the responsive information is the certified agenda of that executive session. Release of this information may implicate both Chapter 551 of the Government Code, the Open Meetings Act, and Section 1232g of title 20 of the United States Code, the Family Educational Rights and Privacy Act of 1974 ("FERPA").

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code, a provision of the Open Meetings Act, provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Thus, such information cannot generally be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). If the responsive information consists entirely of the certified agenda of a closed session, it is confidential under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code and must be withheld, except to the degree that its release is required by FERPA, as discussed below.¹ However, only the certified agenda is subject to section 552.101. If the transcript at issue in the present request, or any other responsive information, such as notes, is not the certified agenda of the closed meeting, this information is not made confidential by section 551.104(c) of the Government Code.

FERPA applies to any information that falls within FERPA's definition of "education records." *See* 20 U.S.C. § 1232g(a)(4)(A). For information that comprises education records, FERPA provides both that a parent has an affirmative right of access to the information pertaining to the parent's child, *see* 20 U.S.C. § 1232g(a)(1)(A), and that the information is confidential to the extent reasonable and necessary to protect the identity of students, *see* 20 U.S.C. § 1232g(b)(1). From the information submitted, we are unable to determine the extent to which the information responsive to the request comprises education records under FERPA, if at all. We do advise, however, that if any of the information at issue is subject to FERPA, then FERPA controls to the extent the requirements of FERPA conflict with state law, including the Open Meetings Act and the Public Information Act. *See* Open Records Decision No. 431 (1985) (FERPA prevails if in conflict with state law); *see also* Equal Employment Opportunity Comm'n v. City of Orange, Texas, 905 F. Supp 381, 382 (E.D. Tex. 1995). Thus, if the information is both confidential pursuant to section 552.101 in conjunction with section 551.104 of the Government Code and subject to release to the present requestor pursuant to FERPA, then FERPA controls and the information must be made available to the requestor.

¹This office lacks the authority to review a certified agenda in connection with the open records rulings process. *See* ORD 495 at 4 (1988). Thus, a governmental body is not required to comply with section 552.301(e)(1)(D) if the sole information responsive to an open records request is a certified agenda under section 551.104(c) of the Government Code.

As we are unable to determine the degree to which release of the responsive information is controlled by FERPA, we direct you to address this question to the Family Policy Compliance Office of the U.S. Department of Education. That agency may be contacted at 400 Maryland Ave., Washington, D.C. 20202-0498, or by telephone at (202) 260-3887.

In conclusion, you must determine the degree to which the responsive information must be withheld or released in compliance with FERPA, by contacting the Family Policy Compliance Office of the U.S. Department of Education. To the extent FERPA conflicts with state law, FERPA controls. If the responsive information consists entirely of a certified agenda of a closed meeting, it is confidential under state law and must be withheld unless its release is required by FERPA. All responsive materials that are not the certified agenda of a closed meeting must be released except to the extent the information is confidential under FERPA.

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 Jay Burns
Assistant Attorney General
Open Records Division

MJB/er

Ref: ID# 145826

cc: Mr. Dagoberto Zavala, Sr.
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