



April 27, 2001

Ms. Cheryl T. Mehl
Schwartz & Eichelbaum, P.C.
4201 West Parmer Lane, Suite 100
Austin, Texas 78727

OR2001-1731

Dear Ms. Mehl:

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# 146514.

The Henrietta Independent School District (the "district"), which you represent, received a request for the personnel file of a named former teacher, "any investigations conducted on" the named individual, and "any audio tape" regarding the named individual. You indicate that the district has released information responsive to the request. You assert that a portion of the submitted Exhibit 2, as well as the entirety of the submitted Exhibits 3 and 4, are excepted from disclosure under sections 552.026, 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

At the outset, we note that the submitted information, in whole or in part, may be subject to required withholding under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. 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 261.201 governs release of information related to reports of child abuse or neglect. In pertinent part it reads:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

The information provided indicates that Child Protective Services was contacted. It is therefore possible that at least portions of the information relate to an investigation conducted by or for the Department of Protective and Regulatory Services (the "department") under chapter 261. *See* Fam. Code § 261.406(a) (the department shall perform an investigation of a report of alleged or suspected abuse or neglect of a child in a private or public school under the jurisdiction of the Texas Education Agency). You have not informed this office, nor are we able to ascertain, the extent to which the district provided this information to the department or a law enforcement agency, or the extent to which it is also held by the department or a law enforcement agency, for purposes of a chapter 261 investigation. To the extent that the submitted documents are also contained in the files of an investigation conducted under chapter 261 of the Family Code, we believe such information is made confidential by section 261.201 of the Family Code. We thus conclude such information must not be released to the requestor.¹ To the extent the submitted information is not also contained in the files of an investigation conducted under chapter 261, such information is not made confidential by section 261.201 of the Family Code and may not be withheld under section 552.101 on that basis.

We understand you to assert that student identifying information must be redacted from Exhibit 2 and that Exhibit 3 must be withheld in its entirety, pursuant to the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. *See also* Gov't Code §§ 552.026, .114. In Open Records Decision No. 634 (1995), this office concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by section 552.026 of the Act without the necessity of requesting a decision from this office, 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

¹You have not cited any specific rule that the department or any investigating agency has adopted to permit release of such information to the requestor, nor are we aware of any such rule. Hence, we conclude such information must not be released. *See, e.g.,* Open Records Decision No. 440 at 2 (1986).

required public-disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” Open Records Decision Nos. 332 (1982), 206 (1978); *see also* 34 CFR 99.3 (defining “personally identifiable information” subject to withholding under FERPA to include “information that would make the student’s identity easily traceable”). We agree that the district must withhold the information to the extent reasonable and necessary to avoid personally identifying a particular student.² *See also* Open Records Decision No. 673 (2001). We note that one of the documents in Exhibit 2 is a handwritten statement of a student. You have marked for redaction only the student’s name. If the requestor could easily trace the identity of the student from the handwriting or style of expression, this statement must be withheld in its entirety. *See, e.g.*, Open Records Decision No. 224 at 2 (1979). We agree that the information you have marked in Exhibit 2, as well as the entirety of Exhibit 3, must be withheld pursuant to FERPA.

You assert that Exhibit 4 constitutes criminal history record information (“CHRI”) that must be withheld under section 552.101 in conjunction with section 411.097(c) of the Government Code. CHRI generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.097 authorizes a school district to obtain CHRI; however, a school district may not release CHRI except as provided by section 411.097(c). *See* Gov’t Code § 411.097(c); *see also* *Id.* § 411.087 (authorizing school district to obtain CHRI from F.B.I. or any other criminal justice agency in this state). Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI the district obtained from the Department of Public Safety or any other criminal justice agency in this state must be withheld under section 552.101 of the Government Code in conjunction with section 411.097(c) of the Government Code. You do not explain how the district obtained the information in Exhibit 4, and it is unclear, from our review of the information, whether it constitutes CHRI that is subject to chapter 411 of the Government Code. If Exhibit 4 was obtained by the district pursuant to section 411.097 of the Government Code, we agree this information must be withheld under section 552.101 in conjunction with section 411.097(c).

²If you have further questions as to the applicability of FERPA to information that is the subject of a request under the Act, you may consult with the United States Department of Education’s Family Policy Compliance Office. *See* Open Records Decision No. 634 at 4 n.6, 8 (1995).

In the event Exhibit 4 was not obtained by the district pursuant to section 411.097 of the Government Code, we nevertheless find that this information must be withheld under section 552.101. The information at issue constitutes a compilation by a governmental entity of an individual's criminal history. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). We accordingly find that Exhibit 4 must be withheld under section 552.101 in conjunction with the individual's right to privacy.

In summary, to the extent the district provided the information at issue to the department or a law enforcement agency for purposes of an investigation under chapter 261 of the Family Code, such information must be withheld in its entirety pursuant to section 261.201 of the Family Code. The information you have marked in Exhibit 2, as well as the entirety of Exhibit 3, must be withheld pursuant to FERPA. Exhibit 4 must be withheld under section 552.101.

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).

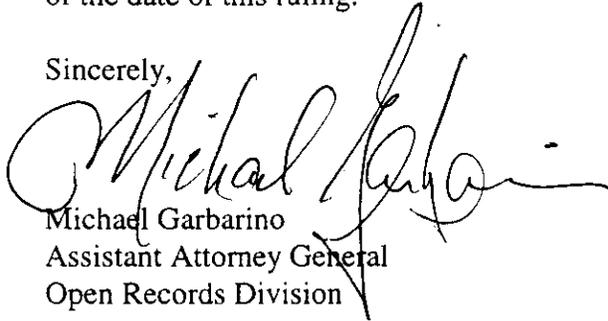
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 146514

Encl. Submitted documents

cc: Mr. Juan J. Cruz
Escamilla & Poneck, Inc.
603 Navarro, Suite 1200
San Antonio, Texas 78205
(w/o enclosures)