



May 3, 2001

Ms. Stacy Tuer Castillo  
Walsh, Anderson, Brown, Schulze & Aldridge  
P.O. Box 460606  
San Antonio, Texas 78246-0606

OR2001-1801

Dear Ms. Castillo:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146739.

The Southside Independent School District (the "school district"), which you represent, received a request for all statements made during an investigation of the requestor. You state that the school district has released a copy of the requestor's own statement to him. However, you claim that portions of the remainder of the requested information are excepted from disclosure under sections 552.026, 552.101, 552.114, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that most of the submitted information is confidential 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 (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). 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). A student's handwritten statement is generally considered "identifying information." *See* Open Records Decision No. 224 (1979). 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.

In 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.

We agree that all of the submitted information constitutes "education records" because it directly relates to students. Consequently, we find that all of the handwritten notes in Exhibit C are confidential under FERPA and must be withheld. *See* Open Records Decision No. 224 (1979). Furthermore, we find that all of the student names you marked as well as additional information we have marked in Exhibit B constitutes student identifying information that must be withheld under FERPA and sections 552.026 and 552.114 of the Government Code.<sup>1</sup>

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<sup>1</sup>We note that although FERPA specifically provides for the release of "education records" to "school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests," 20 U.S.C. § 1232g(b)(1)(A), the federal regulation governing such release of education records provides as follows:

(a) An educational agency or institution *may* disclose personally identifiable information from an education record of a student without the consent [of the student or the student's parent] if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including *teachers*, within the agency or institution *whom the agency or institution has determined to have legitimate educational interests*.

(b) Paragraph (a) does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraph[] (a)(1) . . . of this section.

34 C.F.R. § 99.31 (emphasis added). Thus, it is for the school district to decide whether the requestor in this

Additionally, you contend that the name of an employee included in Exhibit B is excepted from disclosure under section 552.131 of the Government Code. 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

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instance has a "legitimate educational interest" in the education records at issue. You inform us that in this instance, the school district has determined that the release of the information at issue to the requestor would not serve a legitimate educational interest.

specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You indicate that the employee in question alleged a violation of criminal laws concerning the possession of alcohol by minors. Based on your argument and our review of the information, we agree that the school district may withhold from disclosure the identity of the employee whose name you have marked in Exhibit B.

In summary, the school district must withhold Exhibit C and all of the marked information in Exhibit B under FERPA and sections 552.026, 552.114, and 552.131 of the Government Code. Because the remainder of the information in Exhibit B is not confidential, the school district must release the unmarked portions of Exhibit B to the requestor.

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).

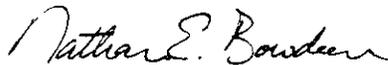
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Dep't of Pub. 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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/rr

Ref: ID# 146739

Encl: Submitted documents

cc: Sgt. Roy Gissendanner  
1926 Chippington  
San Antonio, Texas 78253  
(w/o enclosures)