



May 18, 2001

Ms. Elneita Hutchins-Taylor
School Attorney
Cypress-Fairbanks Independent School District
P.O. Box 692003
Houston, Texas 77269-2003

OR2001-2058

Dear Ms. Hutchins-Taylor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 147435.

The Cyprus-Fairbanks Independent School District (the "district") received a request for:

- 1) All documents, including[,] but not limited to, memoranda, reports, interpretive guidelines, studies, policy [sic] and/or procedures that relate to the use of aversive behavior management techniques, physical restraints, 'therapeutic holds, mechanical restraints, the use of seclusionary timeout, time out enclosures, and/or seclusion rooms for students.
- 2) All documents, including[,] but not limited to, memoranda, reports, interpretive guidelines, studies, policy [sic] and/or procedures that relate to the training of district staff on the use of physical restraints, []therapeutic holds, mechanical restraints, the use of seclusionary timeout, time out-enclosures, calming rooms, calming boxes and/or seclusion rooms.
- 3) Copies of letters, complaints, e-mails, etc. from other parents, since August 1998 related to the use of aversive behavior management techniques, physical restraints, []therapeutic holds, mechanical restraints, the use of seclusionary timeout, time out enclosures, and/or seclusion rooms for students.

- 4) Any correspondence between Cyprus-Fairbanks ISD and TEA and/or Cyprus-Fairbanks ISD and its agents, representatives, employees or attorneys that relates to the use of aversive behavior management techniques, including seclusionary time-out, time-out enclosures and/or seclusion rooms.

You state that the requestor clarified the request by telephone, indicating that she wants information for the past three years only. *See* Gov't Code § 552.222 (permitting governmental body to ask requestor to clarify request). You state that have released some of the responsive information. You claim that the submitted information identifies particular students and their parents and is therefore excepted from disclosure under sections 552.026 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.026 provides that the Public Information Act “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 [“FERPA”], Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.” 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). Open Records Decision No. 539 (1990). 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 have marked the information that may reveal or tend to reveal information about a student that must be withheld pursuant to FERPA.¹

Next, we find that some of the information within the submitted documents may be protected under section 552.117 of the Government Code. Section 552.117(1) requires that the district withhold its employees’ and former employees’ home addresses, telephone numbers, and social security numbers, and information that reveals whether the employee or former employee has family members, but only to the extent that the employees and former employees have elected to keep this information confidential in compliance with section 552.024. *See* Open Records Decision No. 530 (1989) (employee must make election prior to receipt of open records request). Within the submitted documents there appear to be telephone numbers and the home address of a district employee. If this employee elected to keep his or her home telephone numbers and home address confidential, then you must

¹Because this office generally applies the same analysis under section 552.114 and FERPA, we need not address whether the student-identifying information is also protected under section 552.114.

withhold that information along with the information protected by FERPA. All other information must be released.

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,

A handwritten signature in black ink, appearing to read "Stephen P. Agan". The signature is fluid and cursive, with the first name being the most prominent.

Stephen P. Agan
Assistant Attorney General
Open Records Division

SPA/seg

Ref: ID# 147435

Encl. Submitted documents

cc: Ms. Ronnie Schleiss
8115 Cardin Drive
Austin, TX 78759
(w/o enclosures)