



July 2, 2001

Mr. Joe A. De Los Santos
Walsh, Anderson, Brown, Schulze and Aldridge, P.C.
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2001-2826

Dear Mr. De Los Santos:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 148966.

The East Central Independent School District (the "school district"), which you represent, received a request for "copies of all documents and information maintained, assembled or collected by your office relating to the recently concluded investigation against [a named individual]." You state that the school district has released most of the requested information with parts of the records redacted to protect any personally identifiable student information.¹ You claim, however, that the submitted document is excepted from disclosure under sections 552.026, 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the document at issue.

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(a) of the Family Code provides as follows:

¹See Open Records Decision No. 634 (1995) (permitting educational agencies and institutions to withhold personally identifiable nondirectory information in "education records" as defined in the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, without the necessity of requesting an attorney general decision).

(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, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We note that the district is not an agency authorized to conduct a chapter 261 investigation. *See* Fam. Code § 261.103 (listing agencies that may conduct child abuse investigations). Furthermore, you do not indicate that the document is maintained by the district's law enforcement unit or was forwarded to another agency conducting an investigation under this chapter. Thus, if the document is maintained or was forwarded to an appropriate investigating entity, it must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. We will, however address your additional argument against disclosure if the record is not confidential under section 261.201 of the Family Code.

You also argue that the student-identifying information contained in the report is protected under section 552.101 in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 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). After reviewing the document, we have marked the portions that must be withheld pursuant to FERPA.

In summary, if the submitted document is maintained or has been forwarded to an appropriate investigating agency, the document must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. However, if section 261.201 is not applicable, only the marked information must be withheld 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).

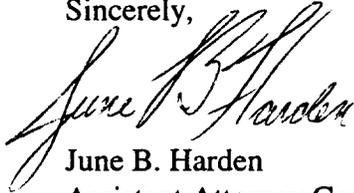
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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,

A handwritten signature in cursive script that reads "June B. Harden". The signature is written in black ink and is positioned to the left of the typed name.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/seg

Ref: ID# 148966

Enc. Submitted documents

c: Mr. Michael J. Currie
Texas Classroom Teachers Association
P.O. Box 1489
Austin, Texas 78767
(w/o enclosures)