



October 2, 2001

Ms. Jennifer Lehmann
Escamilla & Poneck, Inc.
P.O. Box 200
San Antonio, Texas 78291-0200

OR2001-4421

Dear Ms. Lehmann:

On behalf of the Harlandale Independent School District (the "district"), you ask whether the requested information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152711.

The district states that it received a request for

1. any and all records detailing any and all out of state travel for Harlandale I.S.D. employees, representatives and/or anyone travelling [sic] with them since January 1, 1999;
2. any and all records detailing any and all future plans or proposed out of state travel by employees or representatives of the District;
3. any and all credit card receipts since January 1, 1999;
4. any and all current or closed internal audits and/or investigations since January 1, 1999; and
5. any and all reimbursements made to any and all administration member or personnel since January 1, 1999.

The district states that it has no documents responsive to items 2 and 3. The Public Information Act does not require a governmental body to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v.*

Bustamante, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). The requestor clarified his request for item 4 to limit the request to fiscal investigations. You state that you have released all but two of the investigations, which you have submitted and seek to withhold. The district claims that the submitted investigations are excepted under sections 552.101, 552.106, 552.109, 552.111, and 552.112 of the Government Code. We assume that you have released all other responsive information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. You did not, however, submit to this office a copy of the written request for information. Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. See *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law or affects third party interests. See Open Records Decision No. 150 (1977). Sections 552.106, 552.111, and 552.112 are discretionary exceptions and therefore are not compelling reasons that overcome the presumption of openness. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.-Austin 1990, no writ); *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766, 776 (Tex. App.-Austin 1999, pet. denied) (section 552.112 is discretionary exception that government may waive); Open Records Decision No. 473 (1987) (section 552.111 may be waived). Sections 552.101 and 552.109 are compelling reasons because they implicate a third party's rights.

First, you assert that section 552.109 excepts Exhibit B from public disclosure. Section 552.109 excepts private correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy. You explain that the information in Exhibit B pertains to "private matters, not relating to [the individual's] position as a board member, but to his role as a parent." We have reviewed Exhibit B and conclude that it is not private correspondence or communication of an elected office holder. Thus, the district may not withhold Exhibit B under section 552.109.

Next, you contend that some of the requested information is confidential as student records and because it is private information. The Family Educational Rights and Privacy Act of 1974 ("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). 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.

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 agree that you must withhold the information you have marked in Exhibits A and B as information that may reveal or tend to reveal information about a student that must be withheld pursuant to FERPA.

In summary, the district must withhold the information it has marked under FERPA and section 552.114. The district must release the remainder.

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 of 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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/seg

Ref.: ID# 152711

Enc. Submitted documents

c: Mr. Brian Collister
KMOL Channel 4 News
1031 Navarro Street
San Antonio, Texas 78205
(w/o enclosures)