



November 28, 2001

Mr. Jacques Treviño
Gorena & Treviño
420 West University Drive
Edinburg, Texas 78539

OR2001-5518

Dear Mr. Treviño:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code.¹ Your request was assigned ID# 155867.

The Edinburg Consolidated Independent School District (the "district") received a request for the district's contribution for employee health insurance and for the "[t]otal number of Special Education referrals for the 2000-2001 by campus through June 22, 2001." You inform us that, in response to this request, the school district released to the requestor Exhibit C, which appears to be a list of the district's special education initial referrals by campus and grade level for the specified time period. It is noted on Exhibit C that the list does not include babies, private students, new to district homebound, or transfer students. After receiving a copy of Exhibit C, the requestor then submitted another request for "Total number of Special Education referrals for the 2000-2001 school year, by campus, through June 22, 2001. To include babies, private students, new to district homebound or transfer students." You explain that the reason Exhibit C does not include babies, private students, new to district homebound, and transfer students is because the district does not maintain the information on these individuals by campus. However, you have submitted to this office Exhibits E-1 and E-2, the first and last pages of the "Initial Referral Log For 2000-2001." You argue that the release of Exhibits E-1 and E-2 to the requestor would violate the federal

¹The attorney general's authority to issue open records decisions under chapter 552 of the Government Code is distinct from his authority to issue opinions under section 22 of article IV of the Texas Constitution and chapter 402 of the Government Code.

Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.² You also ask several questions about the district's duty under the Act to comply with the request.³

The Act does not require a governmental body to create new information in response to a request. The Act only applies to information in existence at the time of the request. *See* Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). Thus, the Act does not require the district to prepare another document similar to Exhibit C that includes the referrals Exhibit C omitted. Indeed, it apparently would be impossible for the district to do so, since, presumably, many, if not most, of the individuals whose referrals are not accounted for in Exhibit C do not attend a district campus. By asking this office about the required disclosure of Exhibits E-1 and E-2, we believe the district has in good faith attempted to relate the request to information it maintains. *See* Open Records Decision No. 561 at 8 (1990).

Exhibits E-1 and E-2 are education records subject to FERPA.⁴ As such, absent compliance with that law's consent provisions, the district cannot release to the public information in the records that personally identifies a student.⁵ "Personally identifiable" information includes the student's name, the name of the student's parent or other family member, the address of the student or student's family, a personal identifier, such as the student's social security number or student number, a list of personal characteristics that would make the student's identity easily traceable or other information that would make the student's identity easily traceable. *See* 34 C.F.R. § 99.3.

²In 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.

³As neither you nor the requestor addresses the request for the district's contribution for employee health insurance, we assume that the district has released this information to the requestor. *See* Gov't Code § 552.221(a) (requiring prompt production of requested public information).

⁴"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).

⁵FERPA 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). 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)

Thus, pursuant to FERPA, the district must withhold from disclosure all information in Exhibits E-1 and E-2 that may reveal or tends to reveal personally identifiable information about a student. The district must release to the requestor all other information in Exhibits E-1 and E-2.

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).

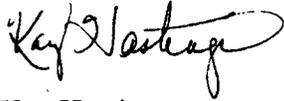
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 Texas Building and Procurement 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,



Kay Hastings
Assistant Attorney General
Open Records Division

KH/seg

Ref: ID# 155867

Enc. Submitted documents

c: Mr. Adrian Fernandez
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(w/o enclosures)