



December 5, 2001

Ms. Elizabeth G. Neally
Attorney for Brownsville I.S.D.
Roerig, Oliveira & Fisher
855 West Price Road, Suite 9
Brownsville, Texas 78520-8786

OR2001-5662

Dear Ms. Neally:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155707.

The Brownsville Independent School District (the "district"), which you represent, received a written request for all records, including videotapes, pertaining to the district's investigation of an employee's alleged misconduct. You state that some responsive information has been released to the requestor, who is acting as the employee's personal representative. You contend that other responsive information is excepted from disclosure pursuant to section 552.135 of the Government Code¹ and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.

Section 552.026 of the Government Code 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.

¹We note that former section 552.131, "Exception: Certain Information Held by School District," was renumbered as section 552.135 by the Seventy-seventh Legislature, effective September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2812, § 21.001(54) (to be codified at Gov't Code § 552.135). The revision was non-substantive.

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 numerated 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" is defined as 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. 20 U.S.C. § 1232g(a)(4)(A). We find that for purposes of FERPA, the records at issue constitute "education records" to the extent that they contain information about identifiable students.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982); 206 (1978). Consequently, the district must withhold the information we have identified as being confidential under FERPA unless the district receives permission to release the student information from the parent of the student. The district must also withhold pursuant to FERPA all portions of the submitted videotapes that contain the image of an identifiable student.

One of the videotapes contains images of peace officers. Section 552.119 of the Government Code requires the withholding of a photograph of a peace officer which, if released, would endanger the life or physical safety of the officer, unless one of three exceptions applies. The three exceptions are: (1) the officer is under indictment or charged with an offense by information; (2) the officer is a party in a fire or police civil service hearing or a case in arbitration; or (3) the photograph is introduced as evidence in a judicial proceeding. Section 552.119 also provides that a photograph exempt from disclosure under this section may be made public if the peace officer gives written consent to the disclosure. Open Records Decision No. 502 (1988). This office has concluded that the applicability of section 552.119 does not require a showing that release of the information would endanger the officer. *Id.* We assume that none of the exceptions to section 552.119 is applicable in this instance, and we therefore conclude that unless the peace officers consent to the release, the district must withhold those portions of the videotape containing the officers' images pursuant to section 552.119 of the Government Code.

You also contend that the requested information is excepted from disclosure under section 552.135 of the Government Code, which protects the identity of a person 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. After reviewing the information at issue, however, we conclude that none of the information is protected under section 552.135 that is not also protected under FERPA. Accordingly, the district may not withhold any of the remaining information pursuant to section 552.135.

In summary, the district must withhold the information we have marked as confidential under FERPA. The district must also withhold under FERPA those portions of the videotapes that contain the images of identifiable students. The images of peace officers contained in the videotapes must also be withheld pursuant to section 552.119 of the Government Code. The district must release the remaining information to the requestor.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); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

²Some of this information is or may be confidential with respect to the public under laws intended to protect the employee's privacy. However, the requestor has a special right of access to that information in this instance. See Gov't Code § 552.023.

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,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/sdk

Ref: ID# 155707

Enc: Submitted documents and videotapes

c: Mr. Humberto Garcia
325 Kings Highway, Suite 4
Brownsville, Texas 78521
(w/o enclosures)