



January 24, 2002

Ms. Marquette Maresh  
Walsh, Anderson, Brown, Schulze & Aldridge, PC  
P.O. Box 2156  
Austin, Texas 78768

OR2002-0352

Dear Ms. Maresh:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157960.

The Austin Independent School District (the "district"), which you represent, received a request for thirteen categories of information. You inform us that the district will release all of the requested information except that responsive to request item number 9, "a copy of [a high school principal's] appointment calendar showing all appointments and identify those appointments and times he was not at [the high school]." You have released the appointment calendar with certain information redacted. You claim that the redacted portions are excepted from disclosure under sections 552.026, 552.101, 552.114, and 552.305 of the Government Code, as well as under the federal Family Educational Rights and Privacy Act. We have considered the exceptions you claim and reviewed the submitted information.

At the outset, you indicate that student identifying information was redacted from the documents that were released, pursuant to the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. *See also* Gov't Code §§ 552.026, .114. Such information was also redacted from the documents submitted to our office as Exhibit 3. In Open Records Decision No. 634 (1995), this office concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by section 552.026 of the Act without the necessity of requesting a decision from this office, 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. 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); *see also* 34 CFR 99.3 (defining "personally identifiable information" subject to withholding under FERPA to include "information that would make the student's identity easily traceable"). We agree that the district must withhold the redacted information to the extent reasonable and necessary to avoid personally identifying a particular student.<sup>1</sup> *See also* Open Records Decision No. 673 (2001).

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrines of common-law and constitutional privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683.

In Open Records Decision No. 635 (1995), this office found that the appointment calendar maintained by an employee for a public official was subject to the Public Information Act in its entirety, including the entries regarding personal appointments and activities, though common-law privacy might except from disclosure certain medical information. To be excepted from disclosure by common-law privacy, this office found that the medical information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and be of no legitimate public interest. The determination of whether particular information is excepted from disclosure by common-law privacy must be made on a case-by-case basis. Upon review of the information you seek to withhold under common-law privacy, we conclude that none of the information is intimate or embarrassing, and therefore, it may not be withheld under section 552.101.

We note, however, that section 552.117(1) of the Government Code may be applicable to the submitted information you seek to withhold under privacy. Section 552.117(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family

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<sup>1</sup>If you have further questions as to the applicability of FERPA to information that is the subject of a request under the Act, you may consult with the United States Department of Education's Family Policy Compliance Office. *See* Open Records Decision No. 634 at 4 n.6, 8 (1995).

member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the named principal timely elected to keep his personal information confidential, the district must withhold the information we have marked under section 552.117(1). The district may not withhold this information under section 552.117 if the named principal did not make a timely election to keep the information confidential.

To summarize, we agree that, pursuant to FERPA, the district must withhold the redacted information pertaining to students to the extent reasonable and necessary to avoid personally identifying a particular student. If the named principal timely elected to keep his personal information confidential, the district must withhold the information we have marked under section 552.117(1). If the named principal did not make a timely election to keep the information confidential, the district may not withhold this information under section 552.117 and it must be released, as we find that it is not confidential under section 552.101 and common-law privacy.

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 157960

Enc. Submitted documents

c: Ms. Cynthia Alexander  
5903 Murray Lane  
Austin, Texas 78703  
(w/o enclosures)