OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

April 16, 2002

Mr. Thomas E. Myers
Brackett & Ellis
100 Main Street
Fort Worth, Texas 76102-3090

OR2002-1878

Dear Mr. Myers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162330.

The Grapevine-Colleyville Independent School District (the "district"), which you represent, received a request for "a mailing list of seniors and juniors for the year 2002." You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code, the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and the No Child Left Behind Act of 2001, Public Law 107-110. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information protected by other statutes. 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); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). 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.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). 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 at 3 (1982), 206 at 2 (1978).

Section 552.114(a) of the Government Code requires that the district withhold "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995).

In 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 of the Government Code 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 of the Government Code 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. *See* Open Records Decision No. 634 at 6-8 (1995).

You generally object to disclosure of the information in question "since [the mailing lists] are personally identifiable non-directory information concerning students under [FERPA]." FERPA defines "directory information" as including the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student. *See* 20 U.S.C. § 1232g(a)(5)(A). The interpretive federal regulation provides that directory information "includes, but is not limited to" these items of information and that the term generally "means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed." *See* 34 C.F.R. § 99.3.

FERPA permits an educational agency or institution to release directory information in accordance with federal notice requirements without subjecting itself to the sanction of loss

of federal funds. *See* 20 U.S.C. § 1232g(a)(5)(B), (b)(1); Open Records Decision No. 634 at 2 n.2 (1995). Section 1232g(a)(5)(B) provides as follows:

> Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

20 U.S.C. § 1232g(a)(5)(B); *see also* 34 CFR § 99.37. Chapter 552 of the Government Code requires an educational agency or institution to give notice and an opportunity to object to the release of directory information as required by federal law and then to release the directory information if there is no objection. *See* Open Records Decision Nos. 634 at 2 n.2 (1995), 244 at 2 (1980), 242 at 2 (1980), 96 at 2 (1975). Thus, if the district has given notice and obtained consent to the disclosure of the information, then chapter 552 of the Government Code requires the district to release the information. *See* Gov't Code §§ 552.006, 552.221; Open Records Decision No. 664 (2000). Conversely, if the district has not obtained consent to the disclosure of the information in accordance with the federal law, then that information is confidential under FERPA and must not be disclosed.

You state that the district adopted Board Policy FL (LOCAL) on May 28, 2001. You have submitted to this office a copy of that policy, which concerns the district's designation of directory information for purposes of FERPA. This policy states in pertinent part that "[a] student's address, telephone number, or e-mail address are not designated by the district as directory information[.]" We do not address the appropriateness of this policy.[1] However, as we understand that the district has not given parents notice and obtained the required consent, FERPA does not permit the district to release to the requestor students' addresses and e-mail addresses. Consequently, the district must not release the requested mailing list to the requestor.[2] *See* 20 U.S.C § 1232g(a)(5)(B); Gov't Code §§ 552.006, 552.221.

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[1]Questions about FERPA should be directed to:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Ave., S.W.
Washington, D.C. 20202-0498
(202) 260-3887

[2]As we are able to make this determination, we need not address the No Child Left Behind Act of 2001.

In summary, the district must withhold from the requestor students' addresses and e-mail addresses in accordance with 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).

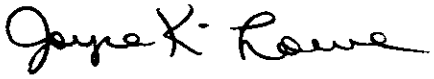
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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,



Joyce K. Lowe
Assistant Attorney General
Open Records Division

JKL/sdk

Ref: ID# 162330

c: Mr. Duane Hickman
Duane Hickman Photography
6350 Glenview Drive
North Richland Hills, Texas 76180