



June 19, 2002

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

OR2002-3318

Dear Ms. Lehmann:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164541.

The San Antonio Independent School District (the "school district"), which you represent, received a request for information relating to one of its teachers. You state that the school district will release most of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.026, 552.114, and 552.135 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.¹ We have considered the exceptions you raise and have reviewed the information you submitted.

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:

¹Former 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) (codified at Gov't Code § 552.135). The revision was non-substantive.

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).

Section 552.114(a) of the Government Code excepts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." 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).

In this instance, the school district has submitted the responsive information that it believes to be confidential under FERPA. Therefore, we will address the applicability of FERPA to that information. Generally, FERPA requires that information be withheld from the public 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). In this instance, however, the information in question consists of documents that were hand-written by students. We therefore agree that these documents are confidential in their entirety under FERPA, as the handwriting of a particular student would tend to make his or her identity easily traceable. *See* 34 C.F.R. § 99.3 ("personally identifiable information" includes, among other things, "[o]ther information that would make the student's identity easily traceable"); Open Records Decision No. 224 (1979) (release of document in student's handwriting would make student's identity easily traceable).

Next, we note that the requestor identifies herself as the director of the professional discipline unit of the State Board for Educator Certification (the "SBEC"). Although a governmental body may treat a request for information by another governmental body as a request under chapter 552 of the Government Code, chapter 552 does not require the governmental body that receives such a request to do so. *See* Attorney General Opinion JM-119 at 2 (1983).

A transfer of information between governmental bodies is not necessarily a release to the public for purposes of chapter 552. *See id.* For example, an official or employee of a governmental body who, in an official capacity, requests information held by another governmental body does not act as a member of the public in doing so. Thus, an official or employee of one governmental body may review records of another governmental body without implicating the prohibition of selective disclosure under chapter 552 of the Government Code. *See* Attorney General Opinion JM-119 at 2 (1983); *see also* Open Records Decision No. 468 at 4 (1987).

An interagency transfer of requested information is prohibited, however, if a confidentiality statute enumerates the specific entities to which confidential information may be disclosed, and the enumerated entities do not include the requesting governmental body. *See* Open Records Decision Nos. 655 at 8-9 (1997), 516 at 4-5 (1989), 490 at 2 (1988); *see also* Attorney General Opinions DM-353 at 4 n. 6 (1995), JM-590 (1986). In this instance, the applicable confidentiality statute is FERPA. FERPA authorizes the transfer of information to enumerated persons, agencies, and organizations for certain specified purposes. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.31. Under FERPA, the SBEC is not one of the persons, agencies, or organizations to which the school district may transfer the information that is at issue here. Therefore, the school district must not release the submitted information to the requestor. As we are able to make this determination, we need not address the school district's claim under section 552.135 of the Government Code.

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

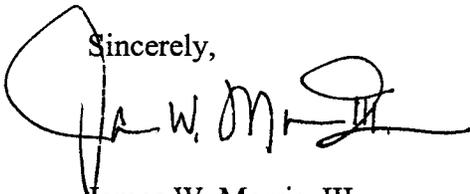
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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,

A handwritten signature in black ink, appearing to read "J.W. Morris, III". The signature is written in a cursive style with a large initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 164541

Enc: Submitted documents

c: Ms. Katherine L. Moore
Director, Professional Discipline Unit
State Board for Educator Certification
1001 Trinity
Austin, Texas 78701-2603
(w/o enclosures)