



November 22, 2002

Mr. S. Anthony Safi
Mounce, Green, Myers, Safi & Galatzan
P. O. Box 1977
El Paso, Texas 79950-1977

OR2002-6723

Dear Mr. Safi:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172772.

The El Paso Independent School District (the "district"), which you represent, received a request for a copy of the requestor's personnel file. You claim that the submitted information is excepted from disclosure pursuant to section 552.135 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.135 provides:

- (a) "Informer" means a student or former student or an employee or former employee of a school district 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.
- (b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].
- (c) Subsection (b) does not apply:
 - (1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or
 - (2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or
 - (3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under this exception to disclosure must clearly identify the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). In this case, we find that the district has failed to sufficiently demonstrate that the conduct reported to the district concerns a possible violation of criminal, civil, or regulatory law under section 552.135. Furthermore, we find that the district has failed to identify the informer or informers in this instance who reported the conduct at issue to the district. Accordingly, we conclude that the district may not withhold any portion of the submitted information under section 552.135 of the Government Code.

We note that portions of the submitted information are subject to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g. 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). "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. *See id.* § 1232g(a)(4)(A).¹

¹ 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 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 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. In this instance, however, the district has submitted the information at issue to this office for consideration. Therefore, we will consider whether any portion of the

Information must be withheld from 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). This includes information that directly identifies a student, as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments making identity of student easily traceable through handwriting, style of expression, or particular incidents related in comments protected under FERPA). Based on our review of the information at issue, we find that portions of the information constitute personally identifiable information contained in a student's education records. This information may include information pertaining to a student's handwriting, as well as other identifying information concerning a student's work and home telephone number, home address, photograph, and information pertaining to a student's family members. Accordingly, we conclude that the district must withhold all such personally identifiable student information contained within the submitted documents pursuant to FERPA. *See* Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978). We also note that the submitted videotape includes such information. Accordingly, we also conclude that the district must withhold all images on this videotape that depict students pursuant to FERPA.

Next, we note that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.² Information is protected from disclosure by the common-law right to privacy when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *See id.* 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. *See id.* at 683. Prior decisions of this office have also found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. *See* Open

remaining information at issue is excepted from disclosure under sections 552.026 and 552.114 of the Government Code.

² Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *See* Gov't Code § 552.101. Section 552.101 encompasses information that is protected from disclosure by the common-law right to privacy.

Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Based on our review of the submitted information, we conclude that the district must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

In addition, we note that portions of the submitted information are excepted from disclosure pursuant to section 552.130 of the Government Code. Section 552.130 excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130*. Accordingly, we conclude that the district must withhold the information that we have marked within the submitted documents pursuant to section 552.130. We also conclude that the district must withhold all depictions of Texas license plates on the submitted videotape pursuant to section 552.130 of the Government Code, other than the depictions of the requestor's Texas license plate. *See Gov't Code § 552.023* (providing that individual has limited special right of access to information when only basis for excepting information from disclosure involves protection of same individual's privacy interest); *see also* Open Records Decision No. 481 (1987).

Finally, we note that portions of the remaining information at issue appear to be protected by copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. *See* Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials, unless an exception to disclosure applies to the information. *See id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making such copies, the member of the public assumes a duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990). Accordingly, we conclude that the district must release the remaining submitted information to the requestor; however, in doing so, the district must comply with copyright law.

In summary, the district must withhold all personally identifiable student information contained within the submitted documents pursuant to FERPA. The district must also withhold all depictions of students on the submitted videotape pursuant to FERPA. The district must withhold the information that we have marked pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy. The district must withhold the information that we have marked within the submitted documents pursuant to section 552.130 of the Government Code. The district must withhold all depictions of Texas license plates on the submitted videotape pursuant to section 552.130,

other than the depictions of the requestor's Texas license plate. The district must release the entirety of the remaining submitted information to the requestor. However, in doing so, the district must comply with copyright law.

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).

Mr. S. Anthony Safi - Page 6

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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 172772

Enc. Submitted documents

cc: Mr. Steve Carroll
7049 Westwind, Apt. #1108
El Paso, Texas 79912
(w/o enclosures)