



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

February 19, 2003

Mr. Quentin D. Price  
Barton, Price & McElroy  
P.O. Box 488  
Orange, Texas 77631-0488

OR2002-1092

Dear Mr. Price:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176857.

The Little Cypress-Mauriceville Consolidated Independent School District ("LCM"), which you represent, received a request for "the written report of the disciplinary action" concerning a named student. You assert the requested information is excepted from disclosure under section 552.101 of the Government Code. We have reviewed the information you submitted and considered the exception you claim.

Initially, we note your belief that LCM did not receive a request that triggered the Public Information Act (the "Act") because the requestor addressed the request to the principal rather than the superintendent, who is LCM's chief administrative officer. Generally, a requestor of public information does not need to address such a request to the officer of public information. *See* Open Records Decision Nos. 497 at 3 (1988), 44 at 2 (1974); *see* Gov't Code § 552.202 (stating each department head is an agent of the officer for public information). The Act requires a request to be reasonably identifiable as a request for public records. *See* Open Records Decision Nos. 497 at 3, 44 at 2. However, a requestor who transmits a request for public records by electronic mail or facsimile must address the request to the officer for public information or the officer's designee. Gov't Code § 552.301(c). Therefore, in this instance, the requestor properly submitted his written letter requesting information when he addressed his request to the principal of the high school.

Next, you assert the submitted information is governed and protected from disclosure by the Family Educational Rights and Privacy Act ("FERPA"). Section 552.026 of the Act 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 [FERPA]." Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." 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. § 1232g(a)(4)(A). Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Gov't Code § 552.114(a). This office generally applies the same analysis under section 552.114 and 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 must withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded must 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. Nevertheless, you have submitted the document at issue to this office for consideration, so we will consider whether this document contains information excepted from disclosure under sections 552.026 and 552.114 of the Government Code.

In this instance, the LCM High School maintains the requested information, which directly relates to a student. Therefore, we agree the submitted document consists of an education record as defined by FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). FERPA requires an educational institution to withhold information from required public disclosure only to the extent "reasonable and necessary to avoid personally identifying a particular student or one or both of the student's parents." Open Records Decision Nos. 332 (1982), 206 (1978). Here, the requestor is not the parent or legal guardian of the only student specifically named in the document. *See* 20 U.S.C. § 1232g(a)(1)(A) (granting parents access to the education records of their children). Also, as evidenced by the request for information, the requestor knows the identity of the student at issue. Furthermore, the requestor has not provided LCM with written authorization from a parent or legal guardian of the named student granting him access to the record in issue. *See* 20 U.S.C. § 1232g(b)(1). Therefore, we agree LCM must withhold the education record in its entirety to satisfy the requirements of 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,

A handwritten signature in cursive script that reads "Christen Sorrell".

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 176857

Enc: Submitted documents

c: Mr. Henry M. Sedoruk, Jr.  
110 Forrest Drive  
Orange, Texas 77630  
(w/o enclosures)