



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 11, 2003

Ms. Barbara G. Heptig
Assistant City Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR2003-1599

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177682.

The Arlington Police Department (the "department") received a written request for, among other things, a former city police officer's "education credentials."¹ You contend that the information you submitted to this office as being responsive to the request is exempted from required disclosure pursuant to section 552.101 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 ("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" are those records, files, documents, and other materials which

- (i) contain information directly related to a *student*; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

¹Because you do not argue that any of the other requested information is exempted from required public disclosure, we assume the department has released that information to the requestor. If it has not, it must do so at this time. See Gov't Code §§ 552.301, .302.

20 U.S.C. § 1232g(a)(4)(A) (emphasis added). A “student”

includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, *but does not include a person who has not been in attendance at such agency or institution.*

Id. § 1232g(a)(6) (emphasis added). The department is not an educational institution attended by students. Consequently, the records you seek to withhold are not “education records” as defined by FERPA. *See* Open Records Decision No. 390 (1983). Because you have raised no other exception to disclosure, we conclude that the submitted records must be released to the requestor in their entirety, with the following possible exception.

It is not clear from the information you provided to this office whether the former police officer is currently a “peace officer” as defined by article 2.12 of the Code of Criminal Procedure. If he is, the department must withhold the information we have bracketed pursuant to section 552.117(2) of the Government Code, which makes confidential all information that relates to the home address, home telephone number, and social security number of a “peace officer” as well as information that reveals whether such a peace officer has family members.² Otherwise, the bracketed information also must be released, unless the officer made an election to keep this information confidential in accordance with section 552.024 of the Government Code prior to the department’s receipt of the current records request. If a timely election was made under section 552.024, then the bracketed information must be withheld under section 552.117(1). *See* Gov’t Code § 552.117(1) (making confidential home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who request that this information be kept confidential under section 552.024); *see also* Open Records Decision No. 530 at 5 (1989) (applicability of section 552.117 must be determined at time request is made).

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.*

²Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

§ 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 Dep't of Pub. 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,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/RWP/seg

Ref: ID# 177682

Enc: Marked documents

c: Mr. Harold B. Cornish
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DeSoto, Texas 75115
(w/o enclosures)