



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

March 12, 2003

Mr. Randall L. Meredith  
Staff Attorney  
Corpus Christi Independent School District  
P. O. Box 110  
Corpus Christi, Texas 78403-0110

OR2003-1688

Dear Mr. Meredith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180254.

The Corpus Christi Independent School District (the "district") received a request for a copy of all statements taken from staff members regarding a particular meeting where the requestor's son was a topic of discussion. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

The requestor argues that the district failed to notify her within the allowable ten business days after receipt of her request that a request for an opinion was being made. We will address the district's obligations under section 552.301(d) of the Government Code. Section 552.301(d) provides:

(d) A governmental body that requests an attorney general decision [to withhold information from public disclosure] must provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request:

(1) a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure; and

(2) a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication.

The requestor acknowledges that the district sent her a copy of its correspondence with this office. The requestor argues, however, that the district did not timely provide this correspondence to the requestor. The district states it received the request for information on February 11, 2003. The letter sent to the requestor was postmarked February 24, 2003, which is within ten business days after the date of receiving the requestor's written request. *See* Gov't Code § 552.308 (submission is timely if document bears post office cancellation mark indicating time within that time period). Therefore, we find that the district adequately complied with section 552.301 of the Government Code.

Initially, we will address your argument that none of the submitted documents appear in any official school file for the children in question, and that therefore these documents may not be considered "education records." The Family Educational Rights and Privacy Act of 1974 ("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. *Id.* § 1232g(a)(4)(A). As noted by the definition, "education records" is broadly defined to include all records which are directly related to a student and maintained by an educational agency or institution. Thus, the location or manner in which an education record is maintained, such as whether or not it is placed in the student's cumulative file, does not affect its status as an education record. FERPA does not require that education records relate exclusively to a student or be created for any particular purpose, only that they contain information that is directly related to a student. *See* 20 U.S.C. § 1232g(a)(4)(A). Furthermore, the definition of "education records" is "records, files, documents and other materials" that contain information directly related to a student. There is no support in the statute that the term "education records" is limited to those that have been placed in a designated file. *See id.* This position was reinforced in *Belanger v. Nashua, New Hampshire, School District*, 856 F. Supp. 40, 48-50 (D.N.H. 1994) (records pertaining to student's juvenile court proceedings maintained by the school district's attorney were "education records" under FERPA). Therefore, because the submitted documents contain information that is directly related to a student or students, they are "education records" as contemplated by FERPA. We will therefore address your claimed exceptions against disclosure.

As stated above, 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). This office generally applies the same analysis under section 552.114 of the Government Code and FERPA. Open Records Decision No. 539 (1990). Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 of the Government Code 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.

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 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, you have submitted the documents at issue to this office for consideration. Therefore, we will consider whether these documents contain information that is excepted from disclosure under sections 552.026 and 552.114 of the Government Code.

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 (1982), 206 (1978). The information at issue directly relates to students. We note, however, that FERPA provides the requestor a right of access to information that identifies the requestor's child. *See* 20 U.S.C. § 1232g(a)(1)(A). Therefore, with the exception of the information that identifies the requestor's child, the district must withhold the student identifying information pursuant to FERPA. We have marked the student identifying information that must be withheld. All other information must be released.

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 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,



Sarah I. Swanson  
Assistant Attorney General  
Open Records Division

SIS/lmt

Ref: ID# 180254

Enc. Submitted documents

c: Minerva Salazar  
4638 Willowick Drive  
Corpus Christi, Texas 78413  
(w/o enclosures)