



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 18, 2003

Ms. Margaret R. Flores
Administrative Officer
San Antonio Independent School District
141 Lavaca Street
San Antonio, Texas 78210-1095

OR2003-1819

Dear Ms. Flores:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 178040.

The San Antonio Independent School District (the "district") received a request for copies of statements taken during a specified investigation. You state that you have provided the requestor with some responsive information. You claim, however, that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.108, 552.114, and 552.135 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that some of the requested information is excepted from disclosure pursuant to section 552.114 of the Government Code. In Open Records Decision No.634 (1995), this office concluded that (1) an educational agency or institution may withhold information from disclosure that is protected by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, and excepted from disclosure under 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 information from disclosure that is excepted from 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. Since the district has made a determination that some responsive handwritten student statements constitute "student records," we conclude that the district must comply with FERPA guidelines in withholding

this information from the requestor.¹ See Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978); see also 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).

You claim that the submitted information is excepted from disclosure pursuant to section 552.108 of the Government Code. Section 552.108 provides in pertinent part that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from disclosure if "release of the information would interfere with the detection, investigation, or prosecution of crime[.]" Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 as an exception to disclosure of requested information must demonstrate, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement or prosecution. See Gov't Code §§ 552.108(a), (b), .301(e)(1)(A); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the submitted statements were created as a result of the district police department's criminal investigation of the individual who is the subject of this request. You indicate that the release of these statements would interfere with a pending prosecution of this individual. Based on our review of your representations and the information at issue, we find that the release of the submitted information "would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Accordingly, we conclude that the district may withhold the submitted information in its entirety pursuant to section 552.108(a)(1) of the Government Code. Because we base our decision on FERPA and section 552.108, we need not address your remaining claimed exception to disclosure.

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

¹ We note that the requestor requests that a transcription of the statements be made and provided to the requestor in the event that the statements themselves cannot be provided. However, it is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

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).

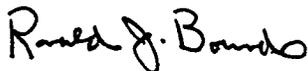
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/lmt

Ref: ID# 178040

Enc. Submitted documents

c: Mr. Bob Comeaux
C/O Margaret R. Flores
San Antonio Independent School District
141 Lavaca Street
San Antonio, Texas 78210-1095
(w/o enclosures)