



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 5, 2003

Ms. JoAnn S. Wright
Walsh, Anderson, Brown,
Schulze & Aldridge, P.C.
P. O. Box 168046
Irving, Texas 75016-8046

OR2003-3007

Dear Ms. Wright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 179687.

The Cedar Hill Independent School District (the "district"), which you represent, received a request for copies of statements pertaining to a particular incident. You claim that the requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.114 and 552.135 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.135 of the Government Code 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 (emphasis added). You inform us that employees of the Dallas County Schools ("DCS") reported an alleged violation of law to DCS and the Cedar Hill police department. You also indicate that the district has been furnished copies of these reports. Although you acknowledge that the employees who reported these alleged violations of law are not employees of the district, you assert that section 552.135 is nevertheless applicable to the information maintained by the district because, otherwise, a requestor could circumvent the protection of section 552.135 by requesting the information from a governmental entity which does not employ the informer in question. After due consideration of your arguments, however, we disagree with your characterization of section 552.135. Section 552.135 is intended to encourage a school district employee to report violations of law to his or her employer or the proper regulatory enforcement authority by granting the employee anonymity when making the report. We do not agree that this protection extends to information that is maintained by a governmental entity other than the employing school district or proper regulatory enforcement authority. *Cf. Roviario v. United States*, 353 U.S. 53, 59 (1957); Open Records Decision No. 515 (1988) (defining purpose and scope of common-law informer's privilege). Thus, as the individuals who made these reports are not employees of the district, we find section 552.135 to be inapplicable in this case. *Cf. Open Records Decision No. 678 (2003)* (providing that Gov't Code § 552.1175 imparts confidentiality to information only in possession of notified governmental body). Accordingly, we conclude that the district may not withhold any portion of the submitted information pursuant to section 552.135 of the Government Code.

You claim that portions of the submitted information are 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 from disclosure

information 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 from disclosure information 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 portions of the responsive information, which it has redacted, constitute personally identifiable student information contained in student records, we conclude that the district must comply with FERPA guidelines in withholding this information from the requestor. *See* Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978); *see also* Open Records Decision No. 224 (1979). We note that other portions of the submitted information may also constitute personally identifiable student information contained in student records. Accordingly, the district must also comply with FERPA guidelines with regard to this information.¹

In summary, the district must comply with FERPA guidelines in withholding the information that it has redacted, as well as with respect to other portions of the submitted information which are subject to FERPA. The district must release the remaining submitted information to the requestor.

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).

¹ If you have questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office, whose address and telephone number follow:

Family Policy Compliance Office
United States Department of Education
600 Independence Avenue S.W.
Washington, D.C. 20202-4605
(202) 260-3887

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# 179687

Enc. Submitted documents

c: Ms. Yolanda Phillips
c/o Joann S. Wright
Walsh, Anderson, Brown,
Schulze & Aldridge, PC
(w/o enclosures)