



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 9, 2003

Ms. Laura Enriquez-Guerra  
Records Management Specialist  
Ysleta Independent School District  
9600 Sims Drive  
El Paso, Texas 79925-7225

OR2003-3940

Dear Ms. Enriquez-Guerra:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 182541.

The Ysleta Independent School District (the "District") received a request for any and all information pertaining to an incident that occurred on a specified date and involving a named student and teacher. You assert the requested information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have reviewed the representative sample of information you submitted and we have considered the exceptions you claim.<sup>1</sup>

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."

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<sup>1</sup> We assume the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

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 documents at issue to this office for consideration; therefore, we will consider whether Exhibit B contains information excepted from disclosure under sections 552.026 and 552.114 of the Government Code.

In this instance, the District maintains the submitted information, which directly relates to students. Therefore, we agree the submitted information constitutes education records 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). Information that directly identifies a student includes information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). Here, the request indicates the requestor knows the identity of one of the students at issue in the information and other students are identifiable by their handwritten comments. We find no evidence that the requestor is the parent or legal guardian of any of these identifiable students. *See* 20 U.S.C. § 1232g(a)(1)(A) (granting parents access to the education records of their children). Moreover, the requestor has not provided the District with written authorization from a parent or legal guardian of any of the students granting him access to the submitted records. *See* 20 U.S.C. § 1232g(b)(1). Therefore, we agree that the District must withhold Exhibit B, 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 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,

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

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 182541

Enc: Submitted documents

c: Mr. Daniel Anchondo  
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2509 Montana  
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(w/o enclosures)