



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 3, 2003

Mr. Stephen E. Dubner
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
P.O. Box 168046
Irving, Texas 75016-8046

OR2003-4606

Dear Mr. Dubner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 183790.

The Greenville Independent School District (the "district"), which you represent, received a request for statements from students and teachers regarding an incident involving a named district student and a named teacher. You claim that part of the requested information is excepted from disclosure under sections 552.114 and 552.135 of the Government Code, and under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of Title 20 of the United States Code. We have considered the exceptions you claim and reviewed the submitted information.

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). 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 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. Information must be withheld from required public disclosure under FERPA to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978).

Under FERPA, a student's parents or guardians have an affirmative right of access to the education records of that student. 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3 ("parent" includes legal guardian of student). Furthermore, under FERPA, the district must release a student's education records to a third party requestor upon receipt of the proper written consent of the student's parents or guardians. 20 U.S.C. § 1232g(b). However, the right to inspect or review the student's education records does not extend to information in the records that identifies other students. *See* 34 C.F.R. § 99.12(a) ("If the education records of a student contain information on more than one student, the [guardian] or eligible student may inspect and review or be informed of only the specific information about that student.").

The submitted documents relate to several district students and consist of education records for purposes of FERPA. The requestors in this case are the grandparents of one of the involved students, whom they name in their request. Upon review of the submitted records, we find that all the submitted records relate to the named student and therefore consist of that student's education records for purposes of FERPA. Because we are unable to determine from the information submitted whether the requestors are the legal guardians of the student at issue, or whether the student's parents have provided the proper written consent authorizing the district to release the student's education records to the requestors, we make the following determination: if the district determines that the requestors are not the legal guardians of the named student at issue, and the district does not have the written authorization of the student's parents to release the requested information to the requestors, the district must withhold the submitted documents in their entirety pursuant to FERPA because the requestors know the identity of the student who is the subject of the records. *See* 20 U.S.C. § 1232g(a)(1)(A), (b)(1).

In the event the district determines that the requestors are the legal guardians of the student at issue, or in the event the district has received written authorization from the student's parents for release of the information to the requestors, then the requestors have a right of access to the education records at issue pursuant to FERPA. *See id.* As noted, however, this right of access would not extend to information identifying other students. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.12(a). In these circumstances, information in the submitted documents that identifies other students must be withheld pursuant to FERPA. *See* Open Records Decision No. 224 (1979) (student's handwritten comments excepted from disclosure by statutory predecessor to section 552.114). In the event the requestors do have a right of access to the education records at issue, however, we must also address your argument under section 552.135 of the Government Code with respect to alleged student and employee informers.

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.

Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of “law,” a school district that seeks to withhold information under section 552.135 must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov’t Code § 552.301(e)(1)(A). You state that the district employees at issue reported an incident of alleged criminal assault under section 22.01 of the Penal Code. Thus, you contend that the submitted documents contain identifying information of student and employee “informers” within the scope of section 552.135. As noted, the submitted documents are subject to FERPA. Information identifying students other than the named student who is the subject of the request is confidential under FERPA and must be withheld, as discussed above. Accordingly, we need not reach your claim under section 552.135 with respect to information identifying students other than the named student at issue.

With respect to information identifying the named student who is the subject of the request, as well as information in the submitted documents identifying district employees, we must address your section 552.135 claim in light of the requestors’ possible right of access under FERPA. In the event the district determines that the requestors are the legal guardians of the named student at issue, or in the event the student’s parents have authorized the district to release the education records at issue to the requestors, the requestors have an affirmative right of access under FERPA to the documents relating to that student. Where a state statute, such as section 552.135 of the Government Code, conflicts with FERPA, the federal law prevails. *See, e.g., Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995); *see also* Open Records Decision No. 431 (1985) (FERPA prevails in conflict with state law). Consequently, if the district determines that the requestors are the legal guardians of the student at issue, or if the student’s parents have authorized the district to release the requested information to the requestors, then information identifying the student, and the identities of district employees appearing in the submitted documents, may not be withheld pursuant to section 552.135 of the Government Code.

In summary, if the district determines that the requestors in this case are not the legal guardians of the student at issue, and if the student’s parents have not authorized the district to release the information, then the district must withhold the submitted documents in their entirety pursuant to FERPA. On the other hand, if the district determines that the requestors are the legal guardians of the named student, or if the student’s parents have provided the district with the proper written consent to release the information at issue, the requestors have a right of access to the submitted records under FERPA. In this situation, the district must withhold information identifying other students pursuant to FERPA, and must release the remainder of the submitted information to the requestors.

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 black ink, appearing to read 'D. Saldivar', with a long, sweeping horizontal stroke extending to the right.

David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 183790

Enc: Submitted documents

c: Ms. Linda Swafford
c/o Walsh, Anderson, Brown, Schulze & Aldridge, P.C.
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(w/o enclosures)