



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

August 1, 2003

Ms. Lynn Rossi Scott
Bracewell & Patterson
201 Main Street, Suite 1600
Fort Worth, Texas 76102-3105

OR2003-5379

Dear Ms. Scott:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 185255.

The Hurst-Eules-Bedford Independent School District (the "district"), which you represent, received a written request for "any investigations that have been conducted about the job performance of" a named district employee, including information pertaining to any suspension of the employee. You indicate that some responsive information has been released to the requestor. You contend, however, that portions of the remaining documents coming within the scope of the request are excepted from required disclosure pursuant to sections 552.026, 552.101, 552.102, and 552.114 of the Government Code.

You state that the district has withheld student transcripts from the requestor in accordance with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 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. Since it appears that the district has made a determination that the transcripts are "education records," the district must comply with the FERPA guidelines.

We next note that the release of the submitted records is governed by section 552.022 of the Government Code. Section 552.022 provides in pertinent part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(1) a completed report, audit, evaluation, or *investigation* made of, for, or by a governmental body, except as provided by Section 552.108.

Gov't Code § 552.022(a)(1) (emphasis added). The submitted records consist of a "completed investigation" made public under section 552.022(a)(1). Consequently, the district must release the submitted records except to the extent they are expressly made confidential under other law or unless the completed investigation is excepted from disclosure pursuant to section 552.108 of the Government Code.¹ However, because the district is required by law to withhold information coming within the protection of the exceptions you have raised, we will consider the applicability of these exceptions to the records at issue.

The submitted records contain district students' identifying information. In this regard, 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.

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). 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); *see also* 45 C.F.R. § 99.3 (1976) (defining "personally identifiable," in part, as list of personal characteristics or other information that would make student's identity easily traceable). We have marked the student identifying information the district must withhold in accordance

¹ We note that you have not raised section 552.108 for any portion of the submitted information.

with FERPA.² The remaining submitted information must be released to the requestor, with the following possible exception.

We note that the submitted records contain information that the district may be required to withhold pursuant to section 552.117(a)(1) of the Government Code. Section 552.117(a)(1) requires that the district withhold, among other things, an employee's home address, but only if the employee timely elected to keep this information confidential in accordance with section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for the information is received by a governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, in order to withhold section 552.117(a)(1) information from the public, a proper election must be made by the employee prior to the governmental body's receipt of the request for information. We have marked the information the district must withhold pursuant to section 552.117(a)(1) if the district employee with whom this information is associated timely elected confidentiality for this information in accordance with section 552.024.

In summary, the district must withhold the student identifying information we have marked in accordance with FERPA. We have also marked the information that may be required to be withheld pursuant to section 552.117(a)(1) of the Government Code. The remaining submitted information must be released 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).

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,

²The fact that the students' identities are protected by FERPA adequately protects those students' privacy interests. Because we resolve your request under FERPA, we need not address your other arguments for non-disclosure.

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,



Christen Sorrell
Assistant Attorney General
Open Records Division

CHS/RWP/sdk

Ref: ID# 185255

Enc: Marked documents

c: Ms. Jennifer Radcliffe
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(w/o enclosures)