



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

August 12, 2003

Ms. Sara Schulz Koehn  
Schwartz & Eichelbaum, P.C.  
7400 Gaylord Parkway, Suite 200  
Frisco, Texas 75034

OR2003-5592

Dear Ms. Koehn:

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# 185858.

The Mission Independent School District (the "District"), which you represent, received a request for twelve categories of information concerning a named District employee. You state the District will provide most of the requested information to the requestor. However, you assert portions of the submitted information are excepted from disclosure under section 552.114 of the Government Code. Also, we acknowledge our receipt of comments from the requestor's law firm, as permitted by the Act. *See* Gov't Code § 552.304 (permitting interested third party to submit comments explaining why information should or should not be released). We reviewed the information you submitted and considered the exception you claim.

Initially, we address your obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Though you

state that a copy of the request for information “is included with this letter,” we have not received this document.<sup>1</sup> Therefore, we conclude that the District has not complied with the requirements of section 552.301(e).

Pursuant to section 552.302 of the Government Code, a governmental body’s failure to comply with section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov’t Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov’t Code § 552.302); Open Records Decision No. 319 (1982). Normally, a compelling reason is when some other source of law makes the information confidential or third party interests are at stake. Open Records Decision No. 150 at 2 (1977). You assert section 552.114, which constitutes a compelling reason to overcome the presumption of openness. Accordingly, we will address your arguments under this exception.

Further, we note section 552.022 of the Government Code governs the submitted information. Section 552.022 provides as follows:

[T]he 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). In this instance, you indicate that the submitted information pertains to a completed investigation of a named District employee’s actions. Thus, the District must release the information, unless it is expressly confidential under other law or excepted from disclosure under section 552.108. As you claim section 552.114 of the Government Code, a mandatory exception, we will address your arguments under this provision.

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). 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

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<sup>1</sup> We note that the requestor included a copy of the request for information in the information he submitted to this office.

Family Educational and Privacy Rights Act of 1974 . . . ('FERPA')." 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.<sup>2</sup> 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 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 such information to this office for consideration; therefore, we will address your arguments under FERPA.

In this instance, the District maintains the submitted information, which directly relates to students. Therefore, this 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). Here, the requestor is not a 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. *Id.* § 1232g(b)(1). Therefore, we agree that the District must withhold the student-identifying information in the submitted documents under section 552.101 in conjunction with FERPA. We concur with most of your redactions and we have marked additional information that the District must withhold in accordance with FERPA. We have marked some information for release because it is not student-identifying.

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<sup>2</sup> Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions of other statutes such as 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". The signature is written in black ink and is positioned above the typed name.

Christen Sorrell  
Assistant Attorney General  
Open Records Division

CHS/seg

Ref: ID# 185858

Enc: Submitted documents

c: Mr. Dennis Ramirez  
Jones, Galligan, Key & Lozano, L.L.P.  
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(w/o enclosures)