ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 30, 2003

Mr. Richard A. Peebles
Attorney at Law
4001 Garth Road, Suite 107
Baytown, Texas 77521-3115

OR2003-6915

Dear Mr. Peebles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188493.

The Port Neches-Groves Independent School District (the "district"), which you represent, received a written request for all written reprimands, reports, letters, memoranda, investigations, and complaints regarding a named district employee. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code, as well as the "Federal FERPA legislation." We have considered the exceptions you claim and reviewed the submitted information.

We note that you have informed a member of our staff that the documents responsive to the present request were included in a request for information for which you previously sought a ruling from this office. In Open Records Letter No. 2003-6518 (2003), we concluded that portions of the submitted information were excepted from public disclosure under sections 552.101, 552.102, 552.114, 552.117, 552.130 and 552.136 of the Government Code, and the Family Educational Rights and Privacy Act of 1974 ("FERPA"). We understand you to represent that the circumstances existing at the time of the issuance of this ruling have not changed and that, consequently, the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2003) have been met in this situation.[1]

[1]The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

Therefore, in reliance on that representation, we conclude that the district must withhold the submitted information previously held to be excepted from disclosure under sections 552.101, 552.102, 552.114, 552.117, 552.130 and 552.136 of the Government Code, and FERPA, in accordance with Open Records Letter No. 2003-6518 (2003), with the following exceptions.

We note that in the present request, the requestor has a special right of access to some of the information at issue. FERPA provides to parents an affirmative right of access to their child's education records:

> No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right *to inspect and review* the education records of their children. . . . Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

20 U.S.C. § 1232g(a)(1)(A) (emphasis added). Consequently, we conclude that the district must release to the requestor the information we have marked, which consists of the education records of the requestor's children. The remaining submitted information must be released or withheld in accordance with Open Records Letter No. 2003-6518.

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,

Sarah I. Swanson
Assistant Attorney General
Open Records Division

SIS/RWP/seg

Ref: ID# 188493

Enc. Submitted documents

c: Mr. Keith Autry
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(w/o enclosures)