



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 7, 2003

Ms. Lydia L. Perry
Law Offices of Robert E. Luna, P.C.
4411 North Central Expressway
Dallas, Texas 75205

OR2003-7101

Dear Ms. Perry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 188928.

The Coppell Independent School District (the "district"), which you represent, received a request for information received by the district concerning a named district employee, to include "any e-mails which [the district] may have received concerning [the named employee] from [a named parent] or any other parents of the former students or students of Coppell High School who are now making allegations concerning [the employee]" You indicate that some responsive information will be provided to the requestor. You claim, however, that portions of the responsive information, including information you seek to redact from the documents you will provide to the requestor, are excepted from disclosure under sections 552.114, and 552.130 of the Government Code, and under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code.¹ 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

¹Although you raise section 552.130, which excepts information pertaining to Texas motor vehicle driver's licenses and motor vehicle titles or registrations, you do not provide comments explaining the applicability of this exception, nor do we find any information in the submitted documents that falls within the scope of the exception. Thus, we do not further address your claim under section 552.130.

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); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). 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.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A).

Section 552.114(a) of the Government Code exempts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995). FERPA protects information to the extent "reasonable and necessary to avoid personally identifying a particular student," or "one or both parents of such a student." *See* Open Records Decision Nos. 332 (1982), 206 (1978).

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 of the Government Code without the necessity of requesting an attorney general decision as to those exceptions,² 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 of the Government Code 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. *See* Open Records Decision No. 634 at 6-8 (1995). In this instance, you have submitted information that you contend is confidential under FERPA. Accordingly, we will address your claim.

You indicate that the documents you have submitted as Exhibit 1 contain personally identifiable information of district students. Upon review, we agree that most of the

²Section 552.101 exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential.

information in Exhibit 1 consists of education records of current or former district students, and that the information you have highlighted in these records reveals the identities of students. Thus, we agree that most of the information you have highlighted in Exhibit 1 is confidential under FERPA as personally identifiable information contained in student education records and therefore must be withheld.

We note, however, that some of the documents in Exhibit 1 are not education records of current or former district students. Accordingly, the information you have highlighted in these documents is not confidential under FERPA and may not be withheld on that basis. We have marked the information in Exhibit 1 that may not be withheld pursuant to FERPA.

With respect to information in Exhibit 1 that is not confidential under FERPA, however, we note that e-mail addresses of individuals contained in Exhibit 1 may be excepted from disclosure under section 552.137 of the Government Code. Section 552.137 of the Government Code provides:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
- (c) Subsection (a) does not apply to an e-mail address:
 - (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
 - (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
 - (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
 - (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Act of June 2, 2003, 78th Leg., R.S., ch. 1089, § 1, 2003 Tex. Sess. Law Serv. 3124 (to be codified as amendment to Gov't Code § 552.137). Section 552.137 requires a governmental body to withhold certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with the governmental body, unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. We note, however, that section 552.137 does not apply to the work e-mail addresses of officers or employees of a governmental body, a website address or Uniform Resource Locator, or the general e-mail address of a business. E-mail addresses within the scope of section 552.137(c) are also not excepted from disclosure under section 552.137. We find that the e-mail addresses in the submitted information are within the scope of section 552.137(a). Unless the district has received affirmative consent to disclose these e-mail addresses, the department must withhold the marked e-mail addresses under section 552.137 of the Government Code.

We also note that portions of the submitted information may be excepted from disclosure under section 552.117 of the Government Code. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who timely elect to keep this information confidential pursuant to section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who elected to keep information confidential pursuant to section 552.024 prior to the date on which the request for this information was made.

The records in Exhibit 1 contain information revealing whether the named employee and other district employees have family members. Because section 552.117 is intended to protect the privacy interests of government employees and their families, the requestor has a special right of access to information concerning his client. *See* Gov't Code § 552.023(b) (governmental body may not deny access to information to a person to whom information relates, or that person's authorized representative, on the grounds that the information is considered confidential solely on the basis of privacy). With respect to the other employees at issue, however, the district must withhold the information we have marked in Exhibit 1 pursuant to section 552.117(a)(1) of the Government Code, provided the employees timely elected to keep this information confidential. If the employees did not timely elect to keep the information confidential, the district may not withhold this information under section 552.117(a)(1) of the Government Code.

In summary, we have marked the information in Exhibit 1 that is not confidential under FERPA. The remainder of the information you have highlighted in Exhibit 1 is confidential under FERPA and must be withheld. With respect to the information that is not confidential under FERPA, we have marked e-mail addresses that must be withheld under section 552.137 of the Government Code, unless the district has received affirmative consent to release them. We have marked information in Exhibit 1 that must be withheld under section 552.117(a)(1) of the Government Code, provided the employees at issue timely elected to keep the information confidential. If the employees did not timely elect to keep this information confidential, the district may not withhold the information under section 552.117(a)(1) and must release the information to the requestor. The requestor has a right of access under section 552.023 of the Government Code to information within the scope of section 552.117 that pertains to the requestor's client. The remainder of the 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, 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,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 188928

Enc: Submitted documents

c: Mr. Hugh E. Hackney
Locke, Liddell & Sapp, L.L.P.
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776
(w/o enclosures)