



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 5, 2004

Ms. Leticia D. McGowan  
School Attorney  
Dallas I.S.D.  
3700 Ross Avenue  
Dallas, Texas 75204

OR2004-3672

Dear Ms. McGowan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 200903.

The Dallas Independent School District ("DISD") received a request for a copy of all records involving the emergency removal of a teacher under investigation for child abuse. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.135<sup>1</sup> of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We note that the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.<sup>2</sup> 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

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<sup>1</sup>Although you raise section 552.131 of the Government Code as a possible exception to disclosure of information about informers, we note that the legislature renumbered this section effective September 1, 2001. See Act of May 22, 2001, 77th Leg., R.S., H.B. 2812, § 21.001(54) (codified at Gov't Code § 552.135). Because the revision was non-substantive, we consider your section 552.131 claim to be a claim under section 552.135 of the Government Code.

<sup>2</sup>FERPA is incorporated into the Public Information Act by section 552.101 of the Government Code, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decisions."

officials and institutions, unless otherwise authorized by the student's parent. *See id.* § 1232g(b)(1). Section 552.114 of the Government Code provides a similar prohibition against public release of student records from an educational institution funded wholly or in part by state funds. "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. 20 U.S.C. § 1232g(a)(4)(A).<sup>3</sup> This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990); *see* Gov't Code § 552.026 (providing that Public Information Act only requires release of information from education records in conformity with FERPA). 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). This includes information that directly identifies a student or parent, as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related).

We conclude that the submitted information consists of education records that are subject to FERPA. Because the requestor knows the students' identities and the students' identities are inextricably embedded in the submitted information, we find that the information cannot be redacted to avoid identifying students. Therefore, DISD must withhold the information in its entirety under section 552.101 in conjunction with FERPA. *See* Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978).<sup>4</sup>

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

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<sup>3</sup>FERPA specifically excludes from the definition of "education records" documents maintained by a law enforcement unit of the educational agency or institution that were created for the purpose of law enforcement. *See* 20 U.S.C. § 1232g(a)(3)(B)(ii). However, as noted above, the submitted records were created for purposes of conducting an administrative investigation of an employee and thus are not subject to the law enforcement exclusion under FERPA. *See* 34 C.F.R. § 99.8(b)(2)(ii) (records of law enforcement unit does not mean those created by unit exclusively for non-law enforcement purpose, such as disciplinary action).

<sup>4</sup>Because we resolve this matter under FERPA, we do not address your claims for exception under sections 552.101 and 552.135.

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,



W. David Floyd  
Assistant Attorney General  
Open Records Division

WDF/sdk

Ref: ID# 200903

Enc. Submitted documents

c:



(w/o enclosures)