



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 11, 2004

Mr. Gary Allmon Grimes
Schuerenberg & Grimes, P.C.
120 West Main, Suite 201
Mesquite, Texas 75149

OR2004-6796

Dear Mr. Grimes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206876.

The Mesquite Independent School District (the "district"), which you represent, received a request for information pertaining to the district's investigation of an incident of alleged physical abuse involving a district student and the requestor's client, a district employee. You claim that some of the requested information is excepted from disclosure under sections 552.026 and 552.114 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. You also claim that a portion of the submitted information is excepted from disclosure under section 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you state that the submitted documents contain information that is made confidential under 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. *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).

As you acknowledge, 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, 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). Because you have submitted the information you contend is protected by FERPA in this instance, we will address your claim under FERPA for the submitted information.

Pages 1 through 16 and page 19 of the submitted records directly relate to the student at issue. We determine that these pages constitute education records for purposes of FERPA. As noted, information that is subject to FERPA must be withheld to the extent reasonable and necessary to avoid personally identifying the particular student at issue or the student's parents. *See* Open Records Decision Nos. 332 (1982), 206 (1978). In this case, the requestor's client knows the identity of the student and parent at issue. We therefore determine that only withholding the names of the student and the student's parent would not suffice to avoid the release of personally identifiable information contained in student education records as mandated by FERPA. Accordingly, we determine that the district must withhold pages 1 through 16, and page 19, of the submitted records in their entirety pursuant to FERPA.

You inquire whether the requestor has a special right of access to information pertaining to herself pursuant to section 552.023 of the Government Code. Section 552.023 provides that

a person has a special right of access to information that is excepted from public disclosure under laws intended to protect the person's own privacy interest as the subject of the information. Gov't Code § 552.023. In this case, we determine that the information at issue is made confidential by law pursuant to FERPA, which is intended to protect the interests of the student as the subject of the information, rather than the privacy interests of the requestor. Accordingly, we note that the requestor does not have a right of access to any of the information at issue pursuant to section 552.023 in this instance.

You also contend that the e-mails submitted as pages 17 and 18 of the documents at issue are excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). You state that the e-mails at pages 17 and 18 relate to the district's investigation and handling of the allegations at issue. Based on your representations and our review, we determine that these e-mails relate to the district's internal administrative and personnel matters and are not related to the policymaking functions of the district. We therefore determine that the district may not withhold pages 17 and 18 under section 552.111 of the Government Code. As you raise no other exceptions to disclosure for this information, we find the district must release pages 17 and 18 to the requestor.

In summary, the district must withhold pages 1 through 16 and page 19 in their entirety pursuant to FERPA. Pages 17 and 18 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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 206876

Enc: Submitted documents

c: Mr. Ted Steinke
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(w/o enclosures)