ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 27, 2005

Ms. Leticia D. McGowan
School Attorney
Dallas Independent School District
3700 Ross Avenue
Dallas, Texas 75204-5491

OR2005-00786

Dear Ms. McGowan:

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# 217673.

The Dallas Independent School District (the "district") received a request for information relating to corporal punishment, including records of the number of students who were spanked in 2001, 2002, and 2003 and correspondence during the past year between parents and teachers, trustees, or administrators. You inform us that the district will release some of the requested information. You have submitted information that the district seeks to withhold under sections 552.026 and 552.114 of the Government Code. We have considered your arguments and reviewed the submitted information.[1]

Section 552.114 excepts from public disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally applies the same analysis under section 552.114 and the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code.[2] *See* Open Records Decision Nos. 634 (1995), 539 (1990). Section

[1]This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

[2]Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses statutory confidentiality provisions such as FERPA.

552.026 provides that the Act "does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA]." *Id.* § 552.026.

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 contained in a student's education records, other than directory information, to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by a parent of the student. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). "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).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from the public information that is protected by FERPA and excepted from required public disclosure under sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to the applicability of those exceptions, and (2) a state-funded educational agency or institution may withhold from the public information that is excepted from disclosure under section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting a decision as to that exception. *See* Open Records Decision No. 634 at 6-8 (1995).

In this instance, you have submitted the information that you claim is confidential under FERPA. Accordingly, we will address your arguments. You inform us that the submitted documents contain information that identifies students of the district. You also state that the district does not have authorization under FERPA to release the submitted student information in this instance. Based on your representations and our review of the submitted documents, we have marked the information that identifies students. The district must withhold that information under FERPA. The rest of the submitted information must be released.

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).

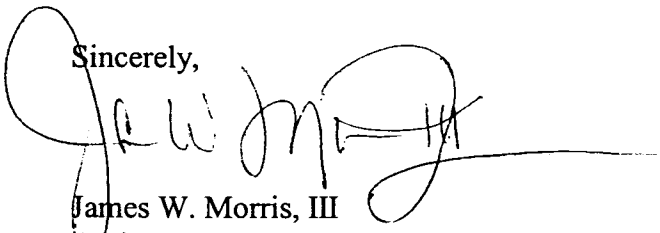
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 217673

Enc: Submitted documents

c: Ms. Vanesa Salinas
Al Dia
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Dallas, Texas 75202
(w/o enclosures)