



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 16, 2005

Ms. Laura C. Rodriguez
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 460606
San Antonio, Texas 78246-0606

OR2005-02248

Dear Ms. Rodriguez:

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# 220204.

The Judson Independent School District (the "district"), which you represent, received two requests for information concerning a former student's allegations of misconduct by a teacher as addressed at a recent district board meeting. You claim that the responsive information is excepted from disclosure under sections 552.101, 552.102, 552.107, 552.108, 552.114, 552.117, 552.130, 552.132, 552.135 and 552.137 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.114 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"). Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990). 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). "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. *See* 20 U.S.C. § 1232g(a)(4)(A). Section 552.026 of the Government Code provides that “information contained in education records of an educational agency or institution” may only be released under the Act in accordance with FERPA.

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 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 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. However, in this instance, you have asked us to rule on the applicability of section 552.114 and FERPA.

Upon review, we agree that most of the submitted documents constitute records maintained by the district that contain information directly related to students. We therefore agree that these documents are education records that are subject to 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). Such information includes information that directly identifies a student 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).

In this instance, you state that the former student attended an open meeting of the district board of trustees, wherein the former student alleged sexual abuse by the teacher. You also state that the former student proceeded to distribute flyers at the meeting detailing the matter, and that similar flyers were posted throughout the campus. Based on these assertions, we conclude that release of the education records with the student’s name redacted “will not be sufficient to protect the personally identifiable information therein.” Because the identity of the student involved is generally known and has been inextricably linked with the incident at issue, we find that the submitted education records cannot be redacted to the extent reasonable and necessary to avoid identifying the former student. Therefore, most of the submitted information must be withheld in its entirety pursuant to sections 552.026 and 552.114 of the Government Code.¹ We note, however, that pages AG-0002 and AG-0003 reflect district policy regarding sexual harassment and sexual abuse, and therefore do not constitute education records and cannot be withheld pursuant to sections 552.026 and 552.114.

¹ Because we reach this conclusion, we need not address your remaining arguments against the disclosure of the submitted education records.

You also claim that pages AG-0002 and AG-0003 are excepted pursuant to section 552.102, which excepts from disclosure information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). However, this provision concerns information in the personnel files of employees of a governmental body. Pages AG-0002 and AG-0003 do not constitute personnel file information of government employees. Thus, section 552.102 is not applicable, and the district may not withhold pages AG-0002 and AG-0003 on that basis.

You also claim that pages AG-0002 and AG-0003 are excepted pursuant to section 552.135, which provides:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student’s or former student’s name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee’s or former employee’s name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.135. Because the legislature specifically limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under section 552.135 must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See also* Gov't Code § 552.301(e)(1)(A). Pages AG-0002 and AG-0003 do not include a report made by an informer or the identity of an informer. Consequently, the district may not withhold pages AG-0002 and AG-0003 under section 552.135. As you raise no other exceptions for this information, pages AG-0002 and AG-0003 must be released to the requestor.

In summary, with the exception of pages AG-0002 and AG-0003, which we have marked for release, the district must withhold the remaining submitted information pursuant to sections 552.026 and 552.114 of the Government Code.

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, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 10 calendar days of the date of this ruling.

Sincerely,



Maro A. Barenblat
Assistant Attorney General
Open Records Division

MAB/sdk

Ref: ID# 220204

Enc: Submitted documents

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(w/o enclosures)