



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 24, 2005

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

OR2005-02546

Dear Ms. Perry and Ms. Maresh:

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# 221061.

The Lewisville Independent School District (the "district"), which you represent, received a request for information related to a named former student, a named employee, and information related to the installation of artificial turf at a district sports facility. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you have not submitted information responsive to the request for "documentation pertaining to the removal of the grass football field at The Colony High School and its replacement with Astro Turf." We assume the district has released this information to the requestor. If it has not, it must do so at this time to the extent that such information existed on the date the city received the request for information. See Gov't Code §§ 552.301(a), .302.

We next address the information you have submitted as Exhibit B. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes, such as the Family Educational Rights and Privacy Act of 1974 ("FERPA"). See 20 U.S.C. § 1232g(b)(1). 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). Under FERPA, "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 id.* § 1232g(a)(4)(A).

Exhibit B consists entirely of records maintained by the district that directly relate to a student of the district. Accordingly, this information constitutes education records for purposes of FERPA. *See, e.g., Belanger v. Nashua, New Hampshire School District*, 856 F. Supp. 40, 48-50 (D.N.H. 1994) (broadly construing FERPA definition of "education records"). Under FERPA, a student's parents or guardians generally have an affirmative right of access to their child's education records. 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3 ("parent" includes legal guardian of student). Specifically, FERPA provides in part that:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children . . . . Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

20 U.S.C. § 1232g(a)(1)(A). In regard to this right of access, FERPA further states that whenever the student "has attained eighteen years of age, or is attending an institution of postsecondary education," the right of access "shall thereafter only be . . . accorded to the student." *Id.* § 1232g(d). In this case, the requestor is the father of the student. We note, however, that the student at issue is 22 years old. Accordingly, under FERPA, the right of access to this information generally lies solely with the student. *Id.*

We are unable to determine whether the requestor, as the father of a student who has attained the age of majority, has a right of access to these records. We note, however, that under certain circumstances, a parent of an adult student does have a right of access to the student's education records. *See* 34 C.F.R. § 99.31 (educational agency or institution may disclose personally identifiable information from education record of student without required consent if disclosure is to parents of dependent student, as defined in section 152 of Internal Revenue Code of 1986); 19 T.A.C. § 89.1049 (unless student's parent or other individual has been granted guardianship of student under Probate Code, all rights granted to parent under Individuals with Disabilities Education Act ("IDEA") will transfer to student upon reaching

age 18); 34 C.F.R. § 300.562 (giving parent right to inspect and review any education records relating to child with disability receiving special education services under IDEA); *see also* 34 C.F.R. § 300.562(c) (“An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.”).

If the requestor has a right of access to the submitted information, it must be released to the requestor. If the requestor does not have a right of access, then because the requestor knows the student’s identity and the student’s identity is inextricably embedded in the submitted information, we find that the submitted information cannot be redacted to avoid identifying the student. Accordingly, in the event the requestor does not have a right of access, the district must withhold the submitted information in its entirety pursuant to section 552.101 of the Government Code in conjunction with FERPA. *See* Open Records Decision Nos. 539 (1990), 332 (1982), 206 (1978).

Next, you contend that the information submitted as Exhibit C is excepted under section 552.101 in conjunction with section 21.355 of the Education Code. Section 21.355 provides, “A document evaluating the performance of a teacher or administrator is confidential.” This office interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). In that opinion, this office also determined that a teacher is someone who is required to hold and does hold a certificate or permit required under chapter 21 of the Education Code and is teaching at the time of the evaluation. *Id.* Based on your representations and the reasoning set out in Open Records Decision No. 643, we find that the professional development and appraisal documents in Exhibit C are confidential under section 21.355 of the Education Code. Accordingly, the district must withhold the information in Exhibit C pursuant to section 552.101 of the Government Code.

In summary, to the extent the requestor has a special right of access to the information submitted as Exhibit B, it must be released in accordance with FERPA. However, if the requestor does not have a special right of access, the district must withhold Exhibit B. The information submitted as Exhibit C must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education 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,



L. Joseph James  
Assistant Attorney General  
Open Records Division

LJJ/seg

Ref: ID# 221061

Enc. Submitted documents

c: Mr. Thomas Fogerty  
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(w/o enclosures)