



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 26, 2005

Mr. James R. Raup
McGinnis, Lochridge & Kilgore, L.L.P.
919 Congress Avenue, Suite 1300
Austin, Texas 78701

OR2005-03539

Dear Mr. Raup:

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# 222655.

The Round Rock Independent School District (the "district"), which you represent, received a request from a district student's parent for a copy of a particular World Geography examination. You inform us that the district has provided copies of the student's answer sheet and allowed the requestor to review the test but claim that the district is not required to provide a copy of the examination under sections 552.101 and 552.114 of the Government Code. We have also received comments from the requestor. *See* Gov't Code § 552.304. We have considered all of the submitted arguments and reviewed the submitted information.

We begin by noting that the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. 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" are 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. *Id.* § 1232g(a)(4)(A).

Under FERPA, a student's parents or guardians 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). As the requestor here is the parent of the child at issue, the requestor has a right of access to the submitted records under FERPA. Under FERPA, parents and guardians have "the right to inspect and review the education records of their children." 20 U.S.C. § 1232g(a)(1)(A). FERPA also requires an educational agency or institution to respond to reasonable requests for explanations and interpretations of education records. *See* 34 C.F.R. § 99.10(c). However, FERPA does not entitle a parent to copy an education record to which the parent has a right of access, unless "circumstances effectively prevent the parent ... from exercising the right to inspect and review the student's education records[.]" 34 C.F.R. § 99.10(d); *see* 20 U.S.C. § 1232g(a)(1)(A). You indicate that the district has allowed the requestor to inspect and review the educational records of his child that are at issue. As neither you nor the requestor inform us of any circumstances that would effectively prevent the parent from exercising the right to inspect and review the student's education records, and as we are not otherwise aware of any such circumstances, we conclude FERPA does not require the district to produce copies or allow the requestor to make copies of the education records pertaining to his child.

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# 222655

Enc. Submitted documents

c: Mr. Lewis F. Mackey, Sr
13017 Muldoon Drive
Austin, Texas 78729
(w/o enclosures)