



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 27, 2005

Ms. Ellen B. Huchital  
McGinnis, Lochridge & Kilgore, LLP  
3200 One Houston Center  
1221 McKinney Street  
Houston, TX 77010

OR2005-03588

Dear Ms. Huchital:

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# 224008.

The Eanes Independent School District (the "district"), which you represent, received a request for "any and all documents that show or reflect correspondence to or from [four named district employees] and members of the EISD Board of Trustees where [members of the requestor's family] are personally identifiable between the dates of January 2003 to present." The requestor further indicates that this information "should include but not be limited to e-mails, letters, notes from meetings, tardy logs, and audio tape recordings."<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.114, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by the requestor. See Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

The Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, provides that no federal funds will be made available under any applicable program to an

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<sup>1</sup>We note that the requestor seeks an audio tape from a school board hearing in addition to the other documents requested. You have not submitted an audio tape, notes from meetings, or tardy logs. We therefore assume you have released such responsive information to the extent it exists. If not, you must do so at this time. See Gov't Code §§ 552.301(e), .302.

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 excepts 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). FERPA grants a student's parents an affirmative right of access to their child's education records, although this right does not extend to information in the student's records that identifies other students. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; *see also* 34 C.F.R. § 99.12(a) ("If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student."). The information at issue constitutes education records of the requestor's child. We therefore determine that the requestor has the right under FERPA to inspect and review or be informed of such information. Moreover, we note that sections 552.101, 552.103, and 552.137, which you assert, may not be applied to deny a parent her right to her child's education records. *See* Gov't Code § 552.026 (incorporating FERPA provisions into Act and making them prevail over inconsistent provisions in Act); Open Records Decision No. 431 (1985) (FERPA prevails when in conflict with state law). Thus, the district may not withhold the submitted information under section 552.101 in conjunction with state law, 552.103, or 552.137 of the Government Code.

You indicate that the submitted records contain information identifying district students other than the requestor's child and parents other than the requestor or her husband that is

confidential pursuant to FERPA.<sup>2</sup> Upon review, we agree that the submitted documents include education records that contain information identifying particular district students other than the requestor's child and parents of other students. Thus, we agree that information in the submitted documents that personally identifies students other than the requestor's child and parents of other students is generally confidential under FERPA and excepted from disclosure under section 552.101. The information that has been marked must be withheld pursuant to section 552.101 and FERPA. The remaining information 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 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).

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<sup>2</sup>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). In this instance, as you have submitted information that you contend is confidential under FERPA, we address the applicability of FERPA to the information.

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,



Elizabeth A. Stephens  
Assistant Attorney General  
Open Records Division

EAS/krl

Ref: ID#224008

Enc. Submitted documents

c: Ms. Cathy Romano  
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(w/o enclosures)