



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 25, 2005

Ms. Lisa B. Silvia
Fort Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

OR2005-04570

Dear Ms. Silvia:

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# 224890.

The Fort Worth Independent School District (the "district") received a request for information, documents, and reports pertaining to allegations against a particular employee. The requestor also asks for a tape recording, if any, of a recent conference with that employee. You state that you have released some of the requested information, but claim that the submitted information is excepted from disclosure under section 552.101. of the Government Code. We have considered the exception you claim and reviewed the submitted information.

The submitted information involves allegations of the sexual abuse of a child. 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 made confidential by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). A school district is not an agency authorized to conduct an investigation under chapter 261. *See* Fam. Code §§ 261.301, .406. However, you inform us, and the documents reflect, that some of the submitted information was communicated to the Child Protective Services Division of the Texas Department of Family and Protective Services for use in a child abuse investigation. To the extent the submitted information has been forwarded to an agency conducting an investigation under chapter 261, it constitutes “working papers used or developed” in an investigation under that chapter and is therefore confidential and must be withheld under section 552.101. However, to the extent that the submitted information was not forwarded to an entity conducting such an investigation, it is not confidential under chapter 261 and may not be withheld under section 552.101 on that basis.

To the extent the information has not been forwarded for use in an investigation under chapter 261, it constitutes records maintained by the district relating to a student. Section 552.101 also encompasses the Family Educational Rights and Privacy Act of 1974 (“FERPA”), 20 U.S.C. § 1232g, which 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). Section 552.114 of the Government Code 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). “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. *Id.* § 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 Public Information 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. 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 both 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).

The submitted information concerns an incident involving the requestor’s client and a named student. Because the requestor and his client know the student’s identity and the student’s identity is inextricably linked with the incident, we find that the submitted information subject to FERPA cannot be redacted to the extent reasonable and necessary to avoid identifying the student. Accordingly, the district must withhold the submitted information subject to FERPA in its entirety pursuant to section 552.101 of the Government Code as well as section 552.114.

In summary, to the extent the submitted information has been forwarded to an agency conducting an investigation under chapter 261 of the Family Code, the district must withhold the information under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. To the extent that the submitted information was not forwarded to an entity conducting such an investigation, it must be withheld under section 552.101 in conjunction with FERPA and under section 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); *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,



José Vela III
Drafting Attorney
Open Records Division

JV/krl

Ref: ID# 224890

Enc. Submitted documents

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(w/o enclosures)