



**ATTORNEY GENERAL OF TEXAS**  
**GREG ABBOTT**

May 27, 2005

Ms. Leticia D. McGowan  
School Attorney  
Dallas Independent School District  
3700 Ross Avenue  
Dallas, Texas 75204-5491

OR2005-4664

Dear Ms. McGowan:

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# 224986.

The Dallas Independent School District (the "district") received a request for all documents related to the district's investigation of Texas Assessment of Knowledge and Skills ("TAKS") cheating allegations at 35 district schools. You state that most of the requested information will be released to the requestor, but you claim that the submitted information is excepted from disclosure under sections 552.026, 552.101, 552.114, and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The Family Educational Rights and Privacy Act of 1974 ("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). "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). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. 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.

In Open Records Decision No. 634 (1995), this office concluded that 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. *See id.* at 6-8 (1995). In this instance, however, you have submitted the requested information to this office for consideration. Therefore, we will consider whether this information is excepted from disclosure under section 552.114 of the Government Code and 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). We have marked the student-identifying information that must be withheld pursuant to section 552.114 of the Government Code and FERPA.

Additionally, we note that FERPA provides that “directory information” may be released to the public if the institution or agency complies with section 1232g(a)(5)(B) of title 20 of the United States Code. “Directory information” includes the student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student. 20 U.S.C. § 1232g(a)(5)(A). Section 1232g(a)(5)(B) provides as follows:

[a]ny educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such

notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

20 U.S.C. § 1232g(a)(5)(B). This office has previously held that a class roster is directory information. *See* Open Records Decision No. 244 (1980). The submitted information also includes class rosters. Accordingly, if the district has designated class rosters as directory information, then the district is required to disclose this information after complying with federal notice requirements for release of directory information. *Id.*; 34 C.F.R. § 99.37. If the district has not designated class rosters as directory information, then the district must withhold these records under section 552.114 and FERPA.

Section 552.101 of the Government Code also encompasses section 39.030 of the Education Code, which provides in relevant part:

(a) In adopting academic skills assessment instruments under [subchapter B, chapter 39 of the Education Code], the State Board of Education or a school district shall ensure the security of the instruments and tests in their preparation, administration, and grading. Meetings or portions of meetings held by the State Board of Education or a school district at which individual assessment instruments or assessment instrument items are disclosed or adopted are not open to the public under Chapter 551, Government Code, and the assessment instruments or assessment instrument items are confidential.

(b) The results of individual student performance on academic skills assessment instruments administered under [subchapter B, chapter 39 of the Education Code] are confidential and may be released only in accordance with [FERPA]. However, overall student performance data shall be aggregated by ethnicity, sex, grade level, subject area, campus, and district and made available to the public, with appropriate interpretations, at regularly scheduled meetings of the board of trustees of each school district. The information may not contain the names of individual students or teachers.

Educ. Code § 39.030(a)-(b). You indicate that portions of the submitted information consist of individual results of student performance on the TAKS test and the Iowa Test of Basic Skills ("ITBS"), which are both academic skills assessment instruments as contemplated by subchapter B, chapter 39 of the Education Code. You further indicate that the submitted documents include aggregated TAKS scores by individual teacher and class. We note that the aggregated data are public under section 39.030(b), but the individual names of teachers associated with that aggregated data are confidential. Therefore, based upon your representations and our review, we have marked the TAKS and ITBS student scores and individual teacher names that are confidential under section 39.030(b) of the Education Code and must be withheld under section 552.101 of the Government Code on that basis.

You also claim that the submitted information includes teacher evaluations that are excepted from disclosure under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 21.355 provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” *See generally* Open Records Decision No. 643 (1996). 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 concluded 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 his or her evaluation. *Id.* Similarly, an administrator is someone who is required to hold and does hold a certificate required under chapter 21 of the Education Code and is administering at the time of his or her evaluation. *Id.* Upon review of your arguments and the submitted information at issue, we agree that some of the submitted information, which we have marked, consists of teacher evaluations that are confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 552.117 of the Government Code may be applicable to the submitted social security numbers of district employees. Section 552.117(a)(1) excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117(a)(1) must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the district may only withhold information under section 552.117(a)(1) on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their social security numbers confidential, the district must withhold these employees’ social security numbers under section 552.117(a)(1). The district may not withhold the social security numbers under section 552.117(a)(1) for those employees who did not make a timely election to keep that information confidential.

Even if section 552.117(a)(1) does not apply, an employee’s social security number may nonetheless be confidential under section 552.101 of the Government Code in conjunction with federal law. The 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that any of the social security numbers at issue are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number

information, you should ensure that no such information was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

In summary, the district must withhold the marked student-identifying information under section 552.114 of the Government Code and FERPA; however, if the district has designated the submitted class rosters as directory information, then the district is required to disclose this information after complying with federal notice requirements for release of directory information. The district must withhold the marked information under section 552.101 of the Government Code in conjunction with section 39.030 of the Education Code. The marked teacher evaluation information must be withheld under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. If the employees at issue made timely elections under section 552.024 of the Government Code to keep their social security numbers confidential, the district must withhold this information under section 552.117(a)(1) of the Government Code. Even if section 552.117(a)(1) of the Government Code does not apply, the employees' social security numbers may be confidential under federal law. The remaining information must be released.

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,



Caroline E. Cho  
Assistant Attorney General  
Open Records Division

CEC/sdk

Ref: ID# 225005

Enc. Submitted documents

c: Mr. Josh Benton  
The Dallas Morning News  
508 Young Street  
Dallas, Texas 75202  
(w/o enclosures)