



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 1, 2005

Ms. Laura C. Rodriguez  
Walsh, Anderson, Brown, Schulze & Aldridge, P.C.  
P.O. Box 460606  
San Antonio, Texas 78246-0606

OR2005-05843

Dear Ms. Rodriguez:

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# 227330.

The East Central Independent School District (the "district"), which you represent, received a request for a named employee's personnel file and all documents related to a recent investigation of that employee for alleged inappropriate conduct with a student. You state that you have released some requested information, but you claim that the submitted information is excepted from disclosure under sections 552.101 and 552.135 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. You claim that the document numbered AG001 is confidential under section 261.201 of the Family Code, which provides in relevant part:

- (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, 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). We note that a school district is not an agency authorized to conduct a chapter 261 investigation. *See* Fam. Code §§ 261.301, 261.406. Furthermore, you do not indicate that AG001 is maintained by the district's law enforcement unit or was forwarded to another agency conducting an investigation under chapter 261. However, if AG001 is maintained by or was forwarded to an appropriate investigating entity, it must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. We will address your additional argument against disclosure if AG001 is not confidential under section 261.201 of the Family Code.

You also argue that the student-identifying information contained in the documents numbered AG001 and AG002 is excepted from disclosure under section 552.101 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. 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).

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 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. In this instance, you have submitted information that you contend is confidential under FERPA. Accordingly, we will address your claim.

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). We have marked the student-identifying information in AG001 and AG002 that the district must withhold under section 552.101 in conjunction with FERPA.<sup>1</sup>

Finally, the district raises section 552.135 of the Government Code for portions of the remaining submitted information. Section 552.135 provides the following:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student’s or former student’s name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee’s or former employee’s name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

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<sup>1</sup>As we are able to make this determination, we need not address your section 552.135 claim for this information.

Gov't Code § 552.135. Because the legislature limited the protection of section 552.135 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You inform us that the remaining information at issue contains the identifying information of an employee who reported a teacher's possible violation of section 106.06 of the Alcohol and Beverage Code. You also state that the informer has not consented to the release of identifying information. Based on your representations and our review of the information at issue, we agree that the district must withhold the informer's identifying information pursuant to section 552.135.

In summary, if the submitted document numbered AG001 is maintained by or has been forwarded to an appropriate investigating agency, it must be withheld under section 552.101 in conjunction with section 261.201 of the Family Code. However, if section 261.201 of the Family Code is not applicable, the student-identifying information in AG001 must be withheld under FERPA. The district must also withhold the student-identifying information we have marked in AG002 under FERPA. The informer's identifying information must be withheld under section 552.135 of the Government Code. 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).

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# 227330

Enc. Submitted documents

c: Mr. Karl Tiger Hanner  
Brim, Arnett, Robinett, Hanner & Connors, P.C.  
2525 Wallingwood Drive, Building 14  
Austin, Texas 78746  
(w/o enclosures)