



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 25, 2005

Ms. Myra A. McDaniel  
Bickerstaff, Heath, Smiley, Pollan, Keever, & McDaniel, L.L.P.  
816 Congress Ave., Suite 1700  
Austin, Texas 78701

OR2005-06611

Dear Ms. McDaniel:

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# 228654.

The Austin Community College ("ACC"), which you represent, received a request for nine categories of information related to a teacher's complaint against the requestor's son. You state that you have made some of the requested information available to the requestor, but you claim that the remaining requested information is excepted from disclosure under section 552.114 of the Government Code and under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of Title 20 of the United States Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that Exhibit E contains completed student evaluations, which are subject to section 552.022 of the Government Code. This section provides that "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" is public and may not be withheld unless it is expressly confidential under other law or excepted from disclosure by section 552.108. Gov't Code § 552.022(a)(1). You do not claim that the submitted information is excepted under section 552.108. However, you assert that the marked information in the evaluations is excepted under section 552.114 and FERPA;

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<sup>1</sup>You also indicate that you have no information responsive to the seventh requested category of information except for a copy of the complaint at issue. A governmental body need not create new information in response to a request or release information that does not exist at the time a request is received. *See Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed).

therefore we will address those arguments for Exhibit E as well as for the remaining submitted information, which is not subject to section 552.022.

Section 552.114 of the Government Code exempts 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 the Family Educational Rights and Privacy Act of 1974 ("FERPA"). Open Records Decision No. 539 (1990). 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 of the Government Code provides that "information contained in education records of an educational agency or institution" may only be released under the 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. Nevertheless, you have submitted the information at issue to this office for our consideration; therefore, we will consider whether the submitted documents contain information excepted from disclosure under FERPA. We note that in this instance, the requestor's son has given ACC a signed release specifying his own records to be released, the reason for release, and to whom his education records should be released. *See* 20 U.S.C. § 1232g(b)(2)(A). Therefore, we will not address the education records of the requestor's son.

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). However, 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).

You inform our office that the district has not designated class rosters as directory information. Therefore, the district must withhold the student identifying information you have marked in the submitted class rosters in Exhibit D under section 552.114 and FERPA. Additionally, the handwritten notes and the other student record information that you have marked in Exhibits B, E, and F must be withheld under section 552.114 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).

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,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/krl

Ref: ID#228654

Enc. Submitted documents

c: Mr. Leo L. Barnes  
9408 Mystic Oaks Trail  
Austin, TX 78750  
(w/o enclosures)