



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2005

Mr. Francisco R. Canseco  
Escamilla & Poneck, Inc.  
711 Navarro, Suite 100  
San Antonio, Texas 78205

OR2005-07088

Dear Mr. Canseco:

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# 229646.

The United Independent School District (the "district"), which you represent, received three requests for information related to a named district employee and his termination. You state you have released some information but claim that the submitted information is excepted from disclosure under sections 552.114 and 552.135 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Gov't Code § 552.114. 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. 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).

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. In this instance, however, you have submitted some of the requested information to this office for consideration. Therefore, we will consider whether this information is protected by 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" or "one or both parents of such a 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) (student's handwritten comments that would make identity of student easily traceable through handwriting, style of expression, or particular incidents related in comments protected under FERPA). Many of the submitted documents identify, or were created by, district students and are "education records" for purposes of FERPA. Thus, some of the information at issue must be withheld to avoid personally identifying these students. *See* Open Records Decision Nos. 165 (1977) (the standard for "personally identifiable" information requires a showing that a student's identity would be "easily traceable"). We have marked student-identifying information that must be withheld pursuant to FERPA.

You also contend that the names and statements of district employees in the submitted information are excepted from disclosure under section 552.135 of the Government Code. This section provides in relevant part:

- (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].

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 assert that the district employees at issue reported inappropriate conduct by the terminated employee. You explain that this conduct violated the district's policies. However, you do not contend that the reported conduct is a violation of any civil, criminal, or regulatory law. Consequently, the district may not withhold any of the submitted information at issue under section 552.135 of the Government Code.

In summary, the district must withhold the student-identifying information we have marked under FERPA. The remaining submitted 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,



Ramsey A. Abarca  
Assistant Attorney General  
Open Records Division

RAA/jev

Ref: ID# 229646

Enc. Submitted documents

c: Mr. Luis Cortez  
4101 Geronimo Drive  
Laredo, Texas 78041  
(w/o enclosures)

Mr. Tony Conners  
Brim, Arnett, Robinett, Hanner & Conners, P.C.  
2525 Wallingwood Drive, Building 14  
Austin, Texas 78746  
(w/o enclosures)