ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 29, 2005

Mr. Francisco R. Canseco
Escamilla & Poneck, Inc.
5219 McPherson, Suite 306
Laredo, Texas 78041

OR2005-08842

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# 233201.

The United Independent School District (the "district"), which you represent, received a request for certain correspondence relating to the requestor. You inform us that the district has released most of the requested information. You have submitted information that you claim is excepted from disclosure under section 552.135 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Section 552.135 of the Government Code 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].
>
> (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.

Gov't Code § 552.135(a)-(c). 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 this exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See id.* §§ 552.301(e)(1)(A), .135(a). In this instance, you state that the submitted information "reports a possible violation of the District's policy DH (LOCAL)[.]" Because you do not indicate that the reported conduct would be a violation of any civil, criminal, or regulatory law, we conclude that the district may not withhold any of the submitted information under section 552.135 of the Government Code.

We note, however, that the submitted documents appear to identify students. Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."[1] Gov't Code § 552.101. This exception encompasses information that another statute makes confidential. 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); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). FERPA is incorporated into the Act under section 552.026. *See* Gov't Code § 552.026 (Act does not require release of information contained in education records of educational agency or institution except in conformity with [FERPA]).

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[1]Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

In Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from the public information that is protected by FERPA and excepted from public disclosure under sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to the applicability of those sections; and (2) a state-funded educational agency or institution may withhold information that is excepted from disclosure under section 552.114 of the Government Code as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to section 552.114.[2] *See* Open Records Decision No. 634 at 6-8 (1995).

To the extent that the submitted documents contain the names of students of the district, all such students' names are confidential under FERPA. The district must not release any student's name in this instance unless it has authorization under FERPA to do so. The rest of the submitted information is not excepted from disclosure and 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

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[2]Section 552.114 excepts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information under FERPA.

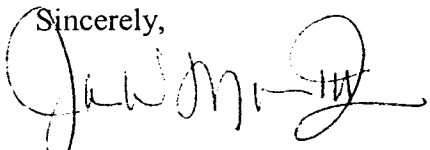
free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

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 Office of the Attorney General 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. 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,



James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 233201

Enc: Submitted documents

c: Ms. Marta Canales
5701 Post Oak
Laredo, Texas 78041
(w/o enclosures)