



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 1, 2005

Ms. Lydia L. Perry  
Law Offices of Robert E. Luna, P.C.  
4411 North Central Expressway  
Dallas, Texas 75205

OR2005-09888

Dear Ms. Perry:

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# 238418.

The Lewisville Independent School District (the "district"), which you represent, received a request for information relating to (1) alleged misconduct or misbehavior involving either of two named individuals at a football game; and (2) a named individual's coaching or teaching experience prior to his employment by the district. You inform us that the district has released some of the requested information. You seek to withhold other responsive information under sections 552.026, 552.114, and 552.117 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA").<sup>1</sup> We have considered your arguments and have reviewed the information you submitted.

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

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<sup>1</sup>In fact, the requestor asks that the district "retain" information relating to the alleged misconduct or misbehavior. Because the requestor may have meant "obtain," and the district has construed this communication as a request for information under the Act, we will consider your arguments with regard to the information that you have submitted as being responsive. We note, however, that the requestor may actually be asking the district to retain information for other purposes under FERPA. See 20 U.S.C. § 1232g; 34 C.F.R. §§ 99.7, 99.10.

the student's parent. *See* 20 U.S.C. § 1232g. "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 id.* § 1232g(a)(4). Section 552.026 of the Government Code provides that the Act "does not require the release of information contained in education records of an educational agency or institution, except in conformity with [FERPA]." Gov't Code § 552.026.<sup>2</sup>

Section 552.114 of the Government Code excepts from public 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. *See* Open Records Decision No. 634 at 5 (1995).

Generally, FERPA requires that information be withheld from the public only to the extent "reasonable and necessary to avoid personally identifying a particular student."<sup>3</sup> *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978). You state that the information that you have highlighted in Exhibit C consists of personally identifiable student information that the district does not have consent to release. We find that one of the highlighted items of information does not tend to identify a student and thus is not confidential under FERPA. *See* 34 C.F.R. § 99.3 (defining personally identifiable information). We have marked that information. We agree that the rest of the highlighted information in Exhibit C is confidential under FERPA and must be withheld from the requestor.

Section 552.117(a)(1) of the Government Code excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(a)(1) must be determined at the time of the governmental body's receipt of the request for the information. *See* Open Records Decision No. 530 at 5 (1989). Thus, the district may only withhold information under section 552.117(a)(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date of the district's receipt of the request for the information. The district may not withhold information under section 552.117(a)(1) on behalf of a current

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<sup>2</sup>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 of the Government Code without the necessity of requesting an attorney general decision as to 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 a decision as to section 552.114. *See* Open Records Decision No. 634 at 6-8 (1995).

<sup>3</sup>We note that a parent has a right of access under FERPA to education record information relating to his or her child. *See* 20 U.S.C. § 1232g(A)(1); 34 C.F.R. § 99.10.

or former employee who did not make a timely election under section 552.024 to keep the information confidential.

You seek to withhold the highlighted information in Exhibit B under section 552.117(a)(1). You state that the employee concerned elected privacy for this information. You do not inform us, however, whether the employee did so prior to the district's receipt of the present request for information. Nevertheless, to the extent that the employee timely elected under section 552.024 to keep the highlighted information confidential, the district must withhold that information under section 552.117(a)(1). To the extent that the employee did not make a timely election under section 552.024, the district may not withhold the highlighted information under section 552.117(a)(1).

In summary: (1) except for the information that we have marked, the district must withhold the highlighted information in Exhibit C under FERPA; and (2) to the extent that the employee concerned made a timely election under section 552.024 to keep the highlighted information in Exhibit B confidential, the district must withhold that information under section 552.117(a)(1) of the Government Code. The rest of the 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).

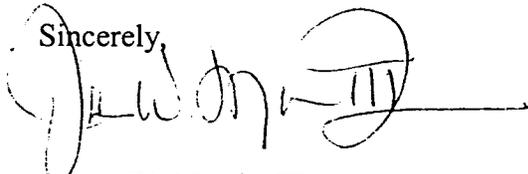
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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); *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,

A handwritten signature in black ink, appearing to read 'J.W. Morris, III', with a long horizontal line extending to the right.

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

JWM/sdk

Ref: ID# 238418

Enc: Submitted documents

c: Ms. Vicki L. Smith-Akins  
504 Barfknecht Lane  
Lewisville, Texas 75056  
(w/o enclosures)