



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 10, 2005

Mr. Bob Ramirez  
Escamilla & Poneck, Inc.  
P. O. Box 200  
San Antonio, Texas 78291-0200

OR2005-10173

Dear Mr. Ramirez:

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# 236048.

The San Antonio Independent School District (the "district"), which you represent, received a request for documents relating to district employees, students, and the reimbursement of monies by district employees relating to alleged abuses of a district program known as the early childhood program.<sup>1</sup> You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.107, 552.111, 552.114, and 552.117 of the Government Code.<sup>2</sup> We have considered the exceptions you claim and reviewed the submitted information.

We first address the district's obligations under section 552.301 of the Government Code. Within fifteen business days of receiving a request for information, a governmental body that wishes to withhold information from public disclosure must submit to this office: (1) general written comments stating the reasons why the stated exceptions apply that would allow the

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<sup>1</sup>As you have failed to submit a copy of the request for information, we take our description from your brief.

<sup>2</sup>Although you also initially raise section 552.107 of the Government Code as an exception to disclosure, in subsequent correspondence you failed to submit arguments in support of this claim. See Gov't Code §§ 552.301, .302. Accordingly, we assume you no longer assert this exception.

information to be withheld; (2) a copy of the written request for information; (3) a signed statement or sufficient evidence showing the date the governmental body received the written request; and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code §552.301(e)(1)(A)-(D). The district failed to submit to this office a copy of the written request for information. We therefore find that the district failed to comply with the procedural requirements of section 552.301 in requesting a ruling from this office.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when third party interests are at stake or when information is made confidential by another source of law. *See* Open Records Decision No. 150 (1977) (construing predecessor statute). Sections 552.103 and 552.111 are discretionary exceptions and are thus waived by the district's failure to comply with section 552.301. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 677 at 10 (2002) (claim of attorney work-product privilege under section 552.111 or Texas Rule of Civil Procedure 192.5 does not provide compelling reason for purposes of section 552.302 if it does not implicate third party rights), 665 at 2 n.5 (2000) (discretionary exceptions in general), 470 (1987) (statutory predecessor to section 552.111 is a discretionary exception). Therefore, the district may not withhold any of the submitted information under either section 552.103 or section 552.111. However, because sections 552.101, 552.102, 552.114, and 552.117 can provide compelling reasons to withhold information, we will address your arguments concerning these exceptions.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes. You claim the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"), which 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).

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. In Open Records Decision No. 634 (1995), this office concluded that 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. *See id.* at 6-8 (1995). In this instance, however, you have submitted the requested information at issue to this office for consideration. Therefore, we will consider whether this information is excepted from disclosure under 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. *See* Open Records Decision Nos. 332 (1982), 206 (1978). Such information includes information that directly identifies a student or parent, as well as information that, if released, would allow the student's identity to be easily traced. We have marked the student-identifying information that must be withheld pursuant to FERPA.

Next, the district asserts that some of the remaining information is private and therefore protected under sections 552.101 and 552.102. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976). Accordingly, we will consider your section 552.101 and section 552.102 claims together.

Information must be withheld under section 552.101 in conjunction with common law privacy if the information is highly intimate or embarrassing and it is of no legitimate concern to the public. *Indus. Found.*, 540 S.W.2d at 685. This office has found that the

following types of information are excepted from required public disclosure under common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982).

In this instance, the student identifying information, which includes the names of their parents who are all district employees, is protected under FERPA. Thus, the employees' privacy interests under section 552.101 and 552.102, if any, is sufficiently protected, and we need not address the district's claims under 552.117. *See* Gov't Code § 552.117 (excepts from disclosure current or former employee's home address, home telephone number and family member information.)

In summary, the district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with 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); *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,



Brian J. Rogers  
Assistant Attorney General  
Open Records Division

BJR/krl

Ref: ID# 236048

Enc. Submitted documents

c: Mr. Brian Collister  
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(w/o enclosures)