



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 29, 2005

Ms. Amanda M. Bigsbee  
Henslee, Fowler, Hepworth & Schwartz, L.L.P.  
306 W. 7<sup>th</sup> Street, Suite 1045  
Fort Worth, Texas 76102

OR2005-10673

Dear Ms. Bigsbee:

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# 237038.

The Weatherford Independent School District (the "district"), which you represent, received a request for information related to the district's "child find" actions, including the identification, location, and evaluation of the students. You state that some of the requested information "will be produced to requestor." You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, 552.114, 552.122, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information protected by other statutes. You raise section 552.101 in conjunction with the federal Individuals with Disabilities Education Act ("IDEA"). See 20 U.S.C. § 1400 *et seq.*

Section 1417 of IDEA provides in part:

The Secretary [of Education] shall take appropriate action, in accordance with the provisions of section 1232(g) of this title, to assure the protection of the confidentiality of any personally identifiable data, information, and records

collected or maintained by the Secretary and by State and local educational agencies pursuant to the provisions of this subchapter.

20 U.S.C. §1417(c). Section 300.125 of title 34 of the Code of Federal Regulations, which provides regulations for the administration of IDEA, pertains to child find activities. Section 300.125 provides in part:

(a) General requirement. (1) The State must have in effect policies and procedures to ensure that

(i) All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are identified, located, and evaluated; and

(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.

...

(e) Confidentiality of child find data. The collection and use of data to meet the requirements of this section are subject to the confidentiality requirements of §§ 300.560-300.577.

34 C.F.R. § 300.125(a), (e). Section 300.571 of the Code of Federal Regulations provides that “an education agency or institution subject to 34 CFR part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99.” 34 C.F.R. § 300.571(b). Additionally, section 300.572 of the Code of Federal Regulations provides that “each participating agency shall assume responsibility for ensuring the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.” 34 C.F.R. § 300.572(a).

You explain that child find is a component of IDEA that requires the school district to “identify, locate, and evaluate all children with disabilities, including children with disabilities attending private school or being home schooled, aged birth to 21, who are in need of early intervention or special education services. Child [f]ind requires that the school district take affirmative steps to locate and provide assistance to all children with disabilities who reside within the school district.” You claim that the submitted information is related to the district’s “child find actions, whether those be identification, location, or evaluation of the students.” Based on your representations and our review, we agree that the personally

identifiable information of children with disabilities contained in the submitted information must be withheld under section 552.101 of the Government Code in conjunction with IDEA.<sup>1</sup>

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

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<sup>1</sup>As our ruling is dispositive, we need not address your remaining arguments.

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, reading "Candice M. De La Garza". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Candice M. De La Garza  
Assistant Attorney General  
Open Records Division

CMD/krl

Ref: ID# 237038

Enc. Submitted documents

c: Ms. Amy Adams  
1210 South Rusk  
Weatherford, Texas 76086  
(w/o enclosures)