ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 20, 2005

Mr. Juan J. Cruz
Escamilla & Poneck, Inc.
Falcon International Building
5219 McPeherson Road, Suite 306
Laredo, Texas 78041

OR2005-11465

Dear Mr. Cruz:

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# 241286.

The United Independent School District (the "district"), which you represent, received a request for a surveillance video tape pertaining to the requestor's son. You claim that the requested information is excepted from disclosure under sections 552.026, 552.108, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, governs the availability of student records held by educational agencies or institutions that receive federal funds under programs administered by the federal government. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. *See* Open Records Decision No. 634 at 5 (1995). 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). Section 552.026 of the Government Code incorporates

FERPA into the Act, *see* Open Records Decision No. 634 at 6-8 (1995), and 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 [FERPA]." Gov't Code § 552.026.

The requestor here is the parent of one of the students depicted in the submitted video. A student and the student's parents have an affirmative right of access to the student's own education records, although this right does not extend to information in the student's records that identifies other students. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; *see also* 34 C.F.R. § 99.12(a) ("If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student."). "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). An "educational agency or institution" is "any public or private agency or institution" that receives federal funds under an applicable program. *Id.* § 1232g(a)(3).

As you inform us that the requested surveillance video is maintained by the district and is related to district students, we find that it constitutes "education records" for purposes of FERPA. *See* Open Records Decision No. 462 at 15 (1987). Because section 552.108 is a state statute that is preempted by federal law to the extent it conflicts with federal law, the information to which the requestor has a right of access under FERPA may not be withheld from her under section 552.108. *See, e.g., Equal Employment Opportunity Comm'n v. City of Orange, Tex.*, 905 F. Supp. 381, 382 (E.D. Tex. 1995); *see also* Open Records Decision No. 431 (1985) (FERPA, 20 U.S.C. § 1232g, prevails when in conflict with state law). Therefore, the requestor, as the parent of one of the students to whom the records relate, has the right to inspect the requested information to the extent it pertains to her child. *See* Open Records Decision No. 229 (1979). However, while the requestor is granted access to the portions of the submitted video that pertain to her own child under FERPA, the district must withhold information from this video that relates to other students. We note that if the district is unable to redact the portions of the submitted video that relate to the other students, then the surveillance video must be withheld in its entirety pursuant to FERPA.

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 ten 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 ten calendar days of the date of this ruling.

Sincerely,

Robert B. Rapfogel
Assistant Attorney General
Open Records Division

RBR/krl

Ref: ID# 241286

Enc. Submitted documents