



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 21, 2005

Ms. Fancy H. Jezek  
Holbrook & Jezek  
P.O. Box 2548  
Harker Heights, Texas 76548-2548

OR2005-11519

Dear Ms. Jezek:

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# 238760.

The Killeen Independent School District (the "district"), which you represent, received a request for a list of information relating to a named employee of the district. You inform us that the district has released some of the requested information. You have submitted information that the district seeks to withhold under sections 552.026, 552.101, and 552.114 of the Government Code. We have considered your arguments and have reviewed the information you submitted.

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." Gov't Code § 552.101. This exception encompasses the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. Section 552.026 of the Government Code incorporates FERPA into the Act. *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).

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); Open Records Decision No. 224 (1979) (release of document in student's handwriting would make student's identity easily traceable). "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).

Section 552.114 of the Government Code exempts 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 that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995).<sup>1</sup>

You assert that the submitted documents contain information that identifies students of the district or that would allow students' identities to be easily traced. Having considered your arguments and reviewed the submitted information, we have marked the information that would tend to identify a student if disclosed. You do not indicate that the district has authorization under FERPA to release any of the submitted student information. Therefore, the district must withhold the information that identifies students under the federal law.

We note that section 552.117 of the Government Code may be applicable to a small amount of the remaining information. Section 552.117(a)(1) exempts 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, information may only be withheld 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 receipt of the request for the information. Information may not be withheld under section 552.117(a)(1) on behalf of a current or former employee who did not make a timely request for confidentiality under section 552.024. We have marked information that the district must withhold under section 552.117(a)(1) if the individual to whom it pertains timely requested confidentiality for the information under section 552.024.

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<sup>1</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 required 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 exceptions; and (2) a state-funded educational agency or institution may withhold from the public information that is excepted from required public 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 that exception. *See* Open Records Decision No. 634 at 6-8 (1995).

In summary: (1) the district must withhold the marked information that identifies students under FERPA; and (2) the district must withhold the information that we have marked under section 552.117(a)(1) of the Government Code if the individual to whom it pertains timely requested confidentiality for the information under section 552.024. 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).

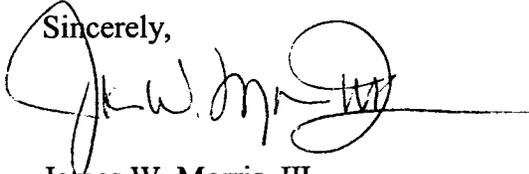
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records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

Ref: ID# 238760

Enc: Submitted documents

c: Mr. John S. Lopez  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-1494  
(w/o enclosures)