



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

January 4, 2006

Ms. Marianna M. McGowan  
Abernathy Roeder Boyd & Joplin P.C.  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2006-00103

Dear Ms. McGowan:

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# 243116.

The Plano Independent School District (the "district"), which you represent, received a request for information relating to an investigation of an incident involving the requestor's child. You claim that some of the requested information is excepted from disclosure under section 552.101 of the Government Code.<sup>1</sup> We have considered the exception you claim and have reviewed the information you submitted.<sup>2</sup>

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 information that another statute makes confidential. The federal Family Educational Rights and Privacy Act of 1974 ("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>We note that the district also provided written notice of this request for information to five other interested persons. As of the date of this decision, this office has received no correspondence from any of the persons who were notified. See Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

<sup>2</sup>This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the district to withhold any information that is substantially different from the submitted information. See Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

the student's parent. *See* 20 U.S.C. § 1232g(b)(1); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information). "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.<sup>3</sup> *See* 20 U.S.C. § 1232g(a)(4)(A); 34 C.F.R. § 99.3 (defining "education records"). 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).<sup>4</sup>

In this instance, the information submitted as Exhibits D and E relates to an investigation of an incident that involved the requestor's child. Under FERPA, a parent or guardian of a student has an affirmative right of access to that student's education records. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.10. Therefore, the requestor, as a parent of a student to whom the information at issue pertains, has a right of access under FERPA to most of the submitted information. However, FERPA does not grant the requestor a right of access to information that identifies students other than his child. *See* 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"). Thus, to the extent that the submitted information identifies students other than the requestor's child, the district must withhold such information under FERPA.<sup>5</sup> *See also* Open Records Decision Nos. 332 (1982), 206 (1978) (information must be withheld under FERPA only to extent reasonable and necessary to avoid personally identifying particular student).

We note that the district seeks to withhold some of the submitted information under section 552.101 of the Government Code in conjunction with common law privacy.<sup>6</sup> However, the

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<sup>3</sup>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 records" under section 552.114(a) as the equivalent of "education records" under FERPA. *See* Open Records Decision No. 634 at 5 (1995).

<sup>4</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 without the necessity of requesting an attorney general decision as to sections 552.026 and 552.101; and (2) a state-funded educational agency or institution may withhold from the public information that is excepted from public disclosure under 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 section 552.114. *See* Open Records Decision No. 634 at 6-8 (1995).

<sup>5</sup>We have marked one item of information that identifies a student other than the requestor's child.

<sup>6</sup>*See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976) (common law privacy protects information that is highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and of no legitimate public interest); *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (applying common law right to privacy to records of investigation of alleged sexual harassment).

common law right to privacy is a state law that is preempted by federal law to the extent that the state law conflicts with the federal law. *See Equal Employment Opportunity Comm'n v. City of Orange*, 905 F.Supp. 381, 382 (E.D. Tex. 1995); *see also* Open Records Decision No. 431 (1985) (information subject to right of access under FERPA not excepted from disclosure under statutory predecessor to Gov't Code § 552.103). Because FERPA, as the applicable federal law, provides the requestor with an affirmative right of access to his child's education records, the district may not withhold any information contained in those records under section 552.101 of the Government Code in conjunction with common law privacy.

We note, however, that the submitted social security numbers of employees of the district do not constitute education records for purposes of FERPA. Section 552.147 of the Government Code provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act.<sup>7</sup> Therefore, the district must withhold the submitted social security numbers under section 552.147.

Finally, we note that some of the submitted information appears to be protected by copyright. A governmental body must allow inspection of copyrighted information unless an exception to disclosure applies to the information. *See* Attorney General Opinion JM-672 (1987). An officer for public information also must comply with copyright law, however, and is not required to furnish copies of copyrighted information. *Id.* A member of the public who wishes to make copies of copyrighted information must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 at 8-9 (1990).

In summary: (1) the district must withhold the submitted information that identifies students other than the requestor's child under FERPA; and (2) the district must withhold its employees' social security numbers under section 552.147 of the Government Code. The district must release the rest of the submitted information. In releasing copyrighted information, the district must comply with copyright law.

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

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<sup>7</sup>We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

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).

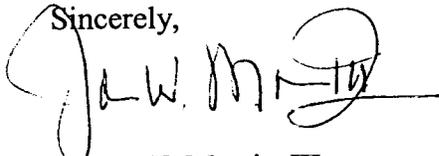
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records 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 "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and "M".

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

JWM/sdk

Ref: ID# 243116

Enc: Submitted documents

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