



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 22, 2006

Ms. Lynn Rossi Scott  
Bracewell & Giuliani, LLP  
777 Main Street, Suite 1210  
Fort Worth, Texas 76102

OR2005-01743

Dear Ms. Scott:

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# 241844.

The Hurst-Eules-Bedford Independent School District (the "district"), which you represent, received a request for the police report and all statements relating to a specific incident involving the requestor's son. You state that some information has been released, but claim that the submitted information is excepted from disclosure under sections 552.101 and 552.114 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

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. This office generally applies the same analysis under section 552.114 and the Family Educational Rights and Privacy Act of 1974 ("FERPA").<sup>1</sup> See Open Records Decision No. 539 (1990). 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). "Education records" means those records that contain

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<sup>1</sup>Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and incorporates confidentiality provisions such as FERPA into the Act. Gov't Code § 552.101.

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). Section 552.026 of the Government Code provides that "information contained in education records of an educational agency or institution" may only be released under the Act in accordance with FERPA.

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) 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* Open Records Decision No. 634 at 6-8 (1995). In this instance, you seek clarification regarding the applicability of FERPA to the submitted documents. Accordingly, we will address your claims.

Generally, 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 both information that directly identifies a student, as well as information that, if released, would allow the student's identity to be easily traced. *See* Open Records Decision No. 224 (1979) (finding student's handwritten comments protected under FERPA because they make identity of student easily traceable through handwriting, style of expression, or particular incidents related). In this instance, the requestor has asked for the police report and all statements relating to a specific altercation involving her son and another student. Some of the submitted information pertains directly to the altercation. However, other information is only tangentially related to the altercation; it pertains solely to the other student. We note that FERPA grants the parents of a student a right of access to the educational records of that student. *See* 20 U.S.C. § 1232g(a)(1)(A). 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3. The Family Policy Compliance Office of the U.S. Department of Education ("DOE") has recently informed this office that records pertaining to an incident involving multiple students are the education records of each student involved in the incident, as the records are directly related to each student involved in the incident. Thus, the requestor, as a parent of one of the children involved in the altercation, has a right of access to her child's records even if the information also pertains to another student. Accordingly, the district must provide the requestor with access to information directly pertaining to the altercation involving the requestor's son. If the requestor seeks copies of these records, the DOE has stated that the district must redact the other student's identifying information from the copies.

Records pertaining solely to the other student involved in the altercation are not the educational records of the requestor's child. Therefore, the requestor has no right of access

to those records. Furthermore, because the requestor knows the identity of the other student involved in the altercation, withholding only the identifying information of this student would not suffice to avoid the release of personally identifiable information contained in his education records. As such, the submitted information solely pertaining to the other student involved in the altercation is confidential in its entirety under FERPA, and must be withheld. We have marked the documents accordingly. As our ruling under FERPA is dispositive, we need not address your remaining arguments.

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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 'José Vela III', with a long horizontal flourish extending to the right.

José Vela III  
Assistant Attorney General  
Open Records Division

JV/krl

Ref: ID# 241844

Enc. Submitted documents

c: Carol Thornton  
thornton.c@comcast.net  
(w/o enclosures)