



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 11, 2007

Ms. Merri Schneider-Vogel
Bracewell & Giuliani L.L.P.
711 Louisiana Street, Suite 2300
Houston, Texas 77002-2770

OR2007-08810

Dear Ms. Schneider-Vogel:

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# 284390.

The Houston Independent School District (the "district"), which you represent, received a request for "all records contained in [a specified] notary book[.]" You claim that some of the requested information is excepted from disclosure under sections 552.101, 552.117, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Recently, the United States Department of Education Family Policy Compliance Office informed this office that the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232(a), does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). You have submitted, among other things, redacted education records for our review. Because our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made, we will not

¹A copy of this letter may be found on the Office of the Attorney General's website at http://www.oag.state.tx.us/opinopen/og_resources.shtml.

address the applicability of FERPA to any of the submitted records.² Such determinations under FERPA must be made by the educational authority in possession of the education records.³ We will, however, address the applicability of the remaining claimed exceptions to the submitted information.

Chapter 406 of the Government Code is applicable to notaries public. *See* Gov't Code § 406.001 *et seq.* Section 406.014 provides in part:

(b) Entries in the notary's book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy.

Id. § 406.014(b)-(c). The requested information is contained in the notary public book of the named district employee. This information is expressly made public by section 406.014 of the Government Code. Information that a statute outside the Act expressly makes public generally may not be withheld from disclosure under an exception contained in the Act. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Therefore, the district may not withhold any of the requested information under section 552.101, 552.117, or 552.130 of the Government Code. The district must release the requested information in its entirety.

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

²Thus, we will not address your arguments under section 552.114 of the Government Code.

³In the future, if the district does obtain parental consent to submit unredacted education records and the district seeks a ruling from this office on the proper redaction of those education records in compliance with FERPA, we will rule accordingly.

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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 284390

Enc. Submitted documents

c: Mr. Stephen D. Fox
Attorney & Counselor at Law
P.O. Box 667535
Houston, Texas 77266
(w/o enclosures)