



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 13, 2007

Mr. Andrew A. Chance
Attorney at Law
One Energy Square
4925 Greenville Avenue, Suite 200
Dallas, Texas 75206

OR2007-10332

Dear Mr. Chance:

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# 286316.

The Center Independent School District (the "district"), which you represent, received a request for school records pertaining to a named student. You state that a portion of the requested information has been provided to the requestor. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.114 of the Government Code. We have considered your comments.

Initially, we note that the United States Department of Education Family Policy Compliance Office has 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

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

“personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You inform us that the requested information includes education records. Our office is prohibited from reviewing these education records to determine whether appropriate redactions under FERPA have been made. Therefore, we will not address the applicability of FERPA to any of the requested records. Such determinations under FERPA must be made by the educational authority in possession of the education records.²

Pursuant to section 552.301(e) of the Government Code, the governmental body is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. Gov’t Code § 552.301(e). You state that the district received this request on May 21, 2007. However, as of this date, you have not submitted to this office arguments explaining how your stated exceptions apply to the requested information, nor have you submitted a copy or representative sample of the information requested. Consequently, we find that the district has failed to comply with the procedural requirements of section 552.301.

Pursuant to section 552.302, a governmental body’s failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Section 552.107 is a discretionary exception to disclosure that protects the governmental body’s interests and may be waived by the governmental body. Thus, this exception does not demonstrate a compelling reason to withhold information from the public. *See* Open Records Decision Nos. 630 at 4-5 (1994) (governmental body may waive statutory predecessor to section 552.107), 665 at 2 n.5 (2000) (discretionary exceptions generally). Because you have not submitted any responsive information or written comments explaining why your claimed exceptions would allow the information to be withheld, we determine that the district has waived its claim under section 552.107. We note that the district also raises section 552.101 of the Government Code. The applicability of this exception can provide a compelling reason for non-disclosure under section 552.302. *In this instance, however, you have not*

²In 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.

submitted any of the responsive information, and we thus have no basis to conclude that this exception is applicable. We therefore conclude that the district must release the requested information to the requestor. If you believe the information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

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 'LH/T', written in a cursive style.

Loan Hong-Turney
Assistant Attorney General
Open Records Division

LH/jb

Ref: ID# 286316

Enc. Submitted documents

c: Ms. Jeralynn Jackee Cox
Tunnell & Cox, L.L.P.
P.O. Box 414
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(w/o enclosures)