



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 16, 2008

Mr. Joey Moczygamba
Superintendent
Natalia Independent School District
P.O. Box 548
Natalia, Texas 78059

OR2008-09671

Dear Mr. Moczygamba:

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# 317340.

The Natalia Independent School District (the "district") received a request for any and all documents associated with the final vote taken by the senior class on May 15, 2008 regarding the selection of the guest speaker for the commencement, including: secret ballots, senior class sponsor notes, senior class officer notes, correspondence, e-mails, faxes, handwritten notes, and phone messages. You state that some of the requested information does not exist.¹ You claim that the submitted information is excepted from disclosure under the Act, but you do not state which exceptions apply. We have reviewed the submitted information.

You state that the requested records are not part of the directory information listed in page 66 of the district's handbook. The United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Right and Privacy Act of 1974, section 1232g of title 20 of the United States Code, ("FERPA") 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

¹We note that a governmental body is not required to release information that did not exist when it received a request. *See Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App. — San Antonio 1978, writ dismissed).

purposes of our review in the open records ruling process under the Act.² See 20 U.S.C. § 1232g(4)(A) (defining “education records”); Open Records Decision No. 462 at 15 (1987); *Belanger v. Nashua, N. H. Sch. Dist.*, 856 F. Supp. 40, 48-50 (D.N.H. 1994) (“education records” include any records, files, document or other materials pertaining to student that are maintained by institution including records pertaining to student’s juvenile court proceedings maintained by school district’s attorney). 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 for our review unredacted education records. Because our office is prohibited from reviewing education records, we will not address the applicability of FERPA to the information at issue, other than to note that parents have a right of access to their own child’s education records.³ See 20 U.S.C. § 1232g(a)(1)(A); *id.* § 99.3. Such determinations under FERPA must be made by the educational authority in possession of the education record. Questions about FERPA should be directed to the following agency:

Family Policy Compliance Office
United States Department of Education
400 Maryland Ave., S.W.
Washington D.C. 20202-0498
(202) 260-3887

Should the district determine that all or portions of the submitted information consists of “education records,” the district must dispose of that information in accordance with FERPA.

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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the

²A copy of this letter may be found on the Office of the Attorney General’s website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

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.

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 challenge 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,



Jessica J. Maloney
Assistant Attorney General
Open Records Division

JJM/jh

Ref: ID# 317340

Enc. Submitted documents