



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 29, 2008

Ms. Andrea Sheehan  
Law Offices of Robert E. Luna  
4411 North Central Expressway  
Dallas, Texas 75205

OR2008-10280

Dear Ms. Sheehan:

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# 317171.

The Frisco Independent School District (the "district"), which you represent, received a request for information regarding an assault incident that involved a named student as well as records indicating any discipline this student has received in this district and certain district code of conduct and policies. You state that some of the requested information has been provided to the requestor, but claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the United States Department of Education Family Policy Compliance Office (the "DOE") 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.<sup>1</sup> 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

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<sup>1</sup>A copy of this letter may be found on the Office of the Attorney General's website, available at [http://www.oag.state.tx.us/opinopen/og\\_resources](http://www.oag.state.tx.us/opinopen/og_resources).

“personally identifiable information” is disclosed. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information”). You submitted a redacted copy of the information and state you have withheld information that is protected under FERPA. Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted records. Such determinations under FERPA must be made by the educational authority in possession of the education records.<sup>2</sup> We will, however, address the applicability of the claimed exception to the submitted information.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This section encompasses information protected by other statutes, including article 15.27 of the Code of Criminal Procedure, which provides in part:

(a) A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board who the agency believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h), shall attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains that the individual is enrolled as a student in a public primary or secondary school, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of that arrest or referral within 24 hours after the arrest or referral is made, or on the next school day. If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. If the individual is a student, the superintendent shall promptly notify all instructional and support personnel who have responsibility for supervision of the student. All personnel shall keep the information received in this subsection confidential. The State Board of Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven days after the date the oral notice is given, the law enforcement agency shall mail written notification, marked “PERSONAL and CONFIDENTIAL” on the mailing envelope, to the superintendent or the person designated by the superintendent. Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or

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<sup>2</sup>In 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.

the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code. The information contained in the notice may be considered by the superintendent or the superintendent's designee in making such a determination.

...

(f) A person who receives information under this article may not disclose the information except as specifically authorized by this article. A person who intentionally violates this article commits an offense. An offense under this subsection is a Class C misdemeanor.

Crim. Proc. Code art. 15.27(a), (f). You indicate the submitted notice letters were provided to the district in accordance with article 15.27(a). Because subarticles 15.27(a) and 15.27(f) make information confidential in the hands of school personnel who receive the information pursuant to article 15.27(a), we find the submitted information is confidential and must be withheld under section 552.101 of the Government Code.

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 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,

A handwritten signature in black ink that reads "Henisha D. Anderson". The signature is written in a cursive style with a large initial "H" and "A".

Henisha D. Anderson  
Assistant Attorney General  
Open Records Division

HDA/mcf

Ref: ID# 317171

Enc. Submitted documents

c: Mr. Randy Mcilwain  
NBC 5  
3900 Barnett Street  
Fort Worth, Texas 76103  
(w/o enclosures)