



January 2, 2001

Ms. Bertha Bailey Whatley
Fort Worth Independent School District
100 N. University Drive
Fort Worth, Texas 76107

OR2001-0012

Dear Ms. Whatley:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 142745.

The Fort Worth Independent School District (the "district") received a request for all personnel information on two suspended employees, including information related to the employees' suspensions. You claim that the information is excepted from disclosure under sections 552.026, 552.101, 552.114, and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You assert that portions of the submitted information are excepted from disclosure under sections 552.026, in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and 552.114 of the Government Code. 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

¹In reaching our conclusion here, we assume that the "representative sample" of the requested records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office. To the extent you hold responsive information that is substantially different from the submitted information, we assume you have released this information. *See* Gov't Code §§ 552.301, .302; *cf.* Gov't Code § 552.022(a)(17).

record,” insofar as the “student record” is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. “Education records” under FERPA are records that

- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

20 U.S.C. § 1232g(a)(4)(A); *see* Open Records Decision Nos. 462 at 15 (1987), 447 at 2-3 (1986).

Here, much of the personnel information relates to the complaints of students against the two named teachers. We find these documents constitute education records for the purposes of FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). Consequently, FERPA requires the district to redact information from the documents in the investigative file to the extent “reasonable and necessary to avoid personally identifying a particular student.” Open Records Decision No. 206 at 2 (1978). This identifying information is deemed confidential under FERPA and must be withheld from disclosure. We have marked the types of information contained within the submitted information that qualifies as identifying information and therefore must be withheld. *See* 34 C.F.R. § 99.3 (defining personally identifiable information); Open Records Decision No. 224 (1979). However, the remainder of the information does not qualify as identifying information and may not be withheld under sections 552.026 and 552.114.

You also claim that the requested information relating to the named employees, specifically information regarding complaints filed against the employees, is confidential under section 552.101 of the Government Code and common law privacy. Section 552.101 excepts from disclosure information that is “considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Included within this exception is information protected under the common law right to privacy. The doctrine of common law privacy protects information if: (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person, and (2) the public has no legitimate interest in it. *See Indus. Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). You state that “the subject matters of [the] complaints are not of public interest because they have not been substantiated by verdict or disposed of by any other means.” However, we have previously found that the public does have a legitimate interest in information about a public employee’s job performance, complaints against the employee, and disciplinary actions taken against the employee. *See* Open Records Decision Nos. 444 (1986), 405 (1983), 329 (1982), 208 (1978). Therefore, with respect to the information not protected under section 552.114 and FERPA, we find the personnel information is not excepted under section 552.101 in conjunction with common law privacy.

Next, you claim that the requested information is excepted under section 552.131 of the Government Code. Section 552.131 provides as follows:

(a) "Informer" means a student or former student or an employee or former employee of a school district who has furnished a report of another person's or persons' possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer's name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

(c) Subsection (b) does not apply:

(1) if the informer is a student or former student, and the student or former student, or the legal guardian, or spouse of the student or former student consents to disclosure of the student's or former student's name; or

(2) if the informer is an employee or former employee who consents to disclosure of the employee's or former employee's name; or

(3) if the informer planned, initiated, or participated in the possible violation.

(d) Information excepted under Subsection (b) may be made available to a law enforcement agency or prosecutor for official purposes of the agency or prosecutor upon proper request made in compliance with applicable law and procedure.

(e) This section does not infringe on or impair the confidentiality of information considered to be confidential by law, whether it be constitutional, statutory, or by judicial decision, including information excepted from the requirements of Section 552.021.

Gov't Code § 552.131. Because the legislature limited the protection of section 552.131 to the identity of a person who reports a possible violation of "law," a school district that seeks to withhold information under that exception must clearly identify to this office the specific civil, criminal, or regulatory law that is alleged to have been violated. *See* Gov't Code § 552.301(e)(1)(A). You indicate that the requested information includes reports of "possible violations of criminal law and/or violations of the regulatory law codified in Chapter 19 of the Texas Administrative Code." After reviewing your arguments and the information you provided this office regarding the criminal indictments against the two

district employees, we agree that the district may withhold from disclosure the identities of the employees who reported the alleged crimes, unless the informers have consented to the release of their identifying information. We have marked the information that may be excepted under section 552.131.

We note that the requested information contains information that is excepted from disclosure under section 552.102(b) of the Government Code. Section 552.102(b) excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee," except for information on the transcript concerning the degree obtained or the curriculum. We have marked the information on the transcripts that must be released; the remaining information on these documents must be withheld under section 552.102(b).

We further note that the requested documents contain information that may be protected from disclosure under section 552.117 of the Government Code. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See Open Records Decision No. 530 at 5 (1989)*. Therefore, the district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the district must withhold the employees' home addresses and telephone numbers, social security numbers, and any information that reveals whether these employees have family members. The school district may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential.

Federal law may also prohibit disclosure of the employees' social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See Open Records Decision No. 622 (1994)*. We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

In summary, you must withhold student identifying information contained in the requested documents under section 552.114 and FERPA. Furthermore, you must withhold the identifying information of informants under section 552.131. You must also withhold the transcripts of the employees, except for information on the degree earned and the curriculum taken. You must withhold the home address and phone number, social security number, and family member information of the employees if they elected to keep this information confidential under section 552.024 of the Government Code before the instant request for information was made. Furthermore, if the employees' social security numbers were obtained or maintained pursuant to a provision of law enacted on or after October 1, 1990, you must withhold the social security numbers.

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).

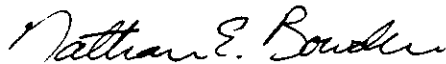
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, 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 General Services Commission 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,



Nathan Bowden
Assistant Attorney General
Open Records Division

NEB/er

Ref: ID# 142927

Encl: Submitted documents

cc: Ms. Nancy Calaway
The Dallas Morning News
P.O. Box 655237
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(w/o enclosures)