



THE ATTORNEY GENERAL
OF TEXAS

AUSTIN, TEXAS 78711

JOHN L. HILL,
ATTORNEY GENERAL.

January 28, 1977

The Honorable Lorene Rogers
President
The University of Texas
601 Colorado Street
Austin, Texas 78701

Open Records Decision No. 152

Re: Obligation to make
available copies of student
education records.

Attention: W. O. Shultz, II

Dear Dr. Rogers:

You have requested our decision in connection with two requests for copies of records maintained by the University of Texas at Austin. The first request was made by an individual who seeks a copy of the transcript of her grades at the University of Texas. In the second request, another individual asks for a copy of his transcript from an out-of-state institution. That transcript is maintained by the University of Texas as part of the individual's student educational records. You state that both individuals have been permitted to inspect and make handwritten copies of the documents requested, but that University officials have refused to furnish copies.

The first individual has been denied a copy of her transcript because of an outstanding and overdue balance on a student loan which was made to her through the University of Texas. You contend that the University is not obligated to provide a copy of the requestor's transcript because: (1) the Federal Family Educational Rights and Privacy Act of 1974 (the Buckley Amendment), 20 U.S.C. § 1232g, does not require that copies of student records be made available to those who can inspect the records; and (2) the Rules and Regulations of the Board of Regents of the University of Texas System permit withholding the grades and transcript of a student who fails to repay a student loan. Your denial of the second individual's request for a copy of his transcript from another institution is based solely upon the Buckley Amendment's failure to require that such copies of student records be provided.

Section 14(e) of the Texas Open Records Act, article 6252-17a, V.T.C.S., provides in part:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974

The Buckley Amendment neither requires nor prohibits the providing of copies of education records to persons who may lawfully inspect those records. You contend, therefore, that section 14(e) of the Open Records Act does not require that copies of education records be provided to the student involved.

You do not deny that the documents sought are student records which must be made available to the student involved under section 3(a)(14) of the Open Records Act. Indeed, you have made the documents sought available for physical inspection by the requesting individuals. The only question presented is whether University officials must provide copies of those records.

Section 4 of the Open Records Act provides in part:

On application for public information to the custodian of information in a governmental body by any person, the custodian shall promptly produce such information for inspection or duplication, or both, in the offices of the governmental body.

We have previously stated that when public records are sought, section 4 of the Open Records Act requires that

the requesting party should be afforded an opportunity to take notes of the contents of the documents in question, or to pay for their duplication, or both. Open Records Decision No. 38 (1974).

We believe it clear that the Open Records Act gives the requesting party the option to take notes from or pay for the duplication of public records, or both. Nothing in section 14(e) of the Open Records Act or the Buckley Amendment prevents the application of this general rule to student records.

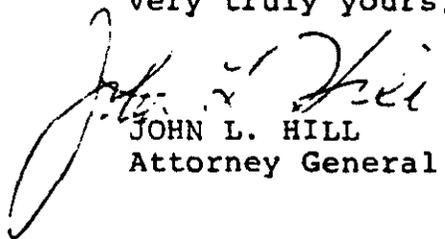
We believe that section 14(e) of the Open Records Act requires only that educational agencies and institutions not release education records in a manner that would conflict with the Buckley Amendment. Inasmuch as the Buckley Amendment does not address the question of whether students must be provided copies of their transcripts, the provisions of sections 3(a)(14), 4 and 9 of the Open Records Act apply, and copies must be made available to the students involved upon payment of a reasonable fee.

Your contention that the Regents' Rules except the requested documents from mandatory disclosure under the Open Records Act has been explicitly rejected by the Supreme Court of Texas.

While a rule may have the force and effect of a statute in other contexts, we do not believe that a governmental agency may bring its information within exception 3(a)(1) [information deemed confidential by law] by the promulgation of a rule. To imply such authority merely from general rule-making powers would be to allow the agency to circumvent the very purpose of the Open Records Act. Industrial Foundation of the South v. Texas Industrial Accident Board, 540 S.W.2d 668, 677 (Tex. 1976).

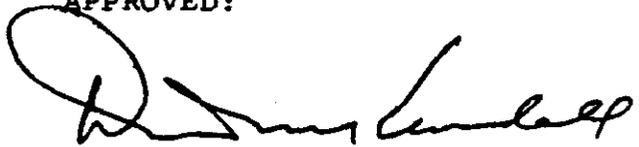
Accordingly, it is our decision that the University of Texas must provide to the requesting individuals copies of their grade transcripts as requested.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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