



The Attorney General of Texas

September 15, 1978

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Mr. James B. Bond
General Counsel
The Texas A & M University System
College Station, Texas 77843

Open Records Decision No. 205

Re: Whether the names of victims of rape and attempted rape are required to be disclosed under the Open Records Act.

Dear Mr. Bond:

Pursuant to section 7 of article 6252-17a, the Texas Open Records Act, you ask whether the names of victims of assaults, attacks, and rapes contained in the files of the university police department are required to be disclosed. You assert that this information is excepted by the Act from required public disclosure by section 3(a)(8) as a law enforcement record and by section 3(a)(1) as information deemed confidential by law.

Since Texas A & M University is an institution of education, the following provision of the Open Records Act applies to this request:

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, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

V.T.C.S. art. 6252-17a, § 14(e). These provisions of the Family Educational Rights and Privacy Act, also known as the Buckley Amendment, prohibit the grant of federal funds to institutions of education that permit the release of a student's education records to third parties without the consent of the student's parent. If the student is eighteen years of age, or is in attendance at an institution of post-secondary education, he has the exclusive right to consent. 20 U.S.C. § 1232g(b)(1), (d). Another provision excludes certain law enforcement records from the definition of "education records":

if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1) of

this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction.

20 U.S.C. § 1232g(a)(4)(B)(ii). The regulations state this exclusion more clearly:

(b) The term ["education records"] does not include

...

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and
(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; Provided, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

45 C.F.R. § 99.3 (1977). We believe the Texas A & M University Police Department is a law enforcement unit of an educational agency within the above definition. See Educ. Code §§ 51.201-51.203; Code Crim. Proc. art. 2.12; Attorney General Opinion H-749 (1975). Its records relating to identifiable students will not be education records as long as the conditions required for the exclusion are met. See 120 Cong. Rec. 39862 (1974). If such records are disclosed to individuals other than law enforcement officers of the same jurisdiction, they become education records subject to the student access and consent requirements of the Buckley Amendment. See S. Schatken, Student Records At Institutions of Postsecondary Education: Selected Issues under the Family Educational Rights and Privacy Act of 1974, 4 J. Coll. and Univ. L., 147, 161 (1977); Note, 61 Iowa L. Rev. 74, 86-88 (1975).

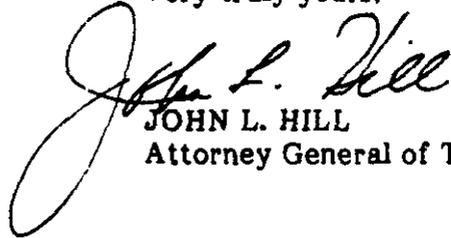
All of the assault victims named in the records you have submitted to us are identified as students of Texas A & M University. You may not release a student's name or any information in these records relating to an identifiable student without the student's written consent. 20 U.S.C. §§ 1232g(b)(1), (d). Accordingly, those portions of the law enforcement records relating to identifiable students are excepted from public disclosure under the Open Records Act. See Open Records Decisions 165 (1977); 142 (1976).

In view of our decision that the Open Records Act does not require the release of assault victims' names contained in your law enforcement records, we

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need not consider whether they are also excepted from disclosure by section 3(a)(1) of the Act as information protected by a constitutional or common law right of privacy or by section 3(a)(8) as law enforcement records.

Very truly yours,

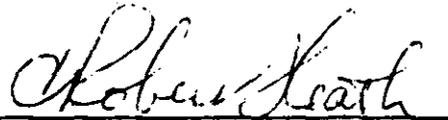


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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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