



The Attorney General of Texas

October 26, 1979

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Mr. Pat Bailey, University Counsel
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Open Records Decision No. 229

Re: Whether giving a student direct access to his or her medical record under Texas Open Records Act is in conflict with federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g.

Dear Mr. Bailey:

You request our decision under section 7 of article 6252-17a, V.T.C.S., the Texas Open Records Act, as to whether a student is entitled to access to laboratory reports involved in and resulting from his care or treatment at the University of Houston Health Center.

Your question requires an interpretation of the provision in the Texas Open Records Act which refers to federal legislation affecting disclosure of records concerning students. The records in question are clearly "student records" within the meaning of section 3(a)(14) of the Texas Act, and would be available to the student under the special right of access provided in that section unless some other provision prevails. See Attorney General Opinion H-749 (1975) (medical records assumed to be student records within section 3(a)(14)); H-447 (1974) (student record generally would include health data).

Section 14(e) of the Texas Open Records Act provides:

(e) 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.

The federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, cuts off federal funds to an educational institution which has

a policy or practice of denying parents of students the right to inspect and review the education records of their children. 20 U.S.C. § 1232g(a)(1)(A). The parents' right of access is given to a student when he or she becomes 18 years old or is attending an institution of postsecondary education, 20 U.S.C. § 1232g(d). The federal Act also cuts off federal funds if an educational institution permits release of a student's education records without the consent of the parents (or the student where the rights are given directly to the student) except as provided in the Act. 20 U.S.C. § 1232g(b)(1).

The federal Act deals with "education records" but specifically excludes from that term the following:

The term 'education records' does not include —

....

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

20 U.S.C. § 1232g(a)(4)(B)(IV).

Thus, under the federal Act, parents of minor students in educational institutions other than postsecondary ones would have a right of access to health records of their child, but by this exclusion, the 18 year old student or one attending a postsecondary institution is not given a right of direct access to such records, but only has an indirect right of access through an appropriate health professional.

The issue presented is whether affording a student at a postsecondary educational institution a direct right of access to his or her health records under section 3(a)(14) of the Texas Act would conflict with the federal Act and thus not be in conformity as required under section 14(e) of the Texas Act.

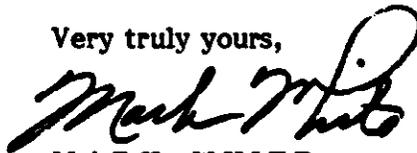
We have said that the federal Act does not restrict disclosure of information not within the definition of "education records." Open Records Decision No. 165 (1977); see Open Records Decision No. 132 (1976). In regard to a question of whether students had a right to obtain a copy of their transcripts under the Texas Act, this office said that the federal Act neither requires nor prohibits the providing of copies of education records to those who may lawfully inspect them, and thus the provisions of the Texas Act control. Open Records Decision No. 152 (1977). This office has also held that where the federal Act

makes release of certain directory information discretionary with the institution, then the Texas Act operates to require disclosure of that information as long as the student is given his right to object to its release as provided under the federal Act. Open Records Decision Nos. 151 (1977); 96 (1975). We note that an individual has a common law right of inspection of his or her own medical records held by a governmental body. Hutchins v. Texas Rehabilitation Commission, 544 S.W.2d 802 (Tex. Civ. App. — Austin 1976, no writ).

In the case presented, the federal Act does not prohibit direct access by a student to this health information. It only gives a limited right of indirect access. We do not believe that it would conflict with the federal Act to afford a student the greater right of access to this information provided by the Texas Act. Nothing in the federal Act or regulations indicates that an educational institution would be subject to cut off of federal funds because they granted a student a right of access to information about himself or herself greater than the minimum required under the federal Act.

It is our decision that the information requested is available to the student under section 3(a)(14) of the Texas Open Records Act, that such disclosure is not in conflict with the federal Family Educational Rights and Privacy Act of 1974, and therefore disclosure is not restricted by section 14(e) of the Texas Open Records Act.

Very truly yours,



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