



## The Attorney General of Texas

JIM MATTOX  
Attorney General

July 26, 1985

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Mr. Robert J. Provan  
General Counsel  
Stephen F. Austin  
State University  
Nacogdoches, Texas 75962

Open Records Decision No. 431

Re: Whether information subject to section 14(e) of the Open Records Act, article 6252-17a, V.T.C.S., may be withheld under section 3(a)(3) of the act

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Dear Mr. Provan:

A student at Stephen F. Austin State University has requested all records which the university, its departments, and its personnel have concerning him. He submitted a partial list of individuals and university departments which might have such records. You believe that this information is excepted from disclosure under section 3(a)(3) as "information relating to litigation" to which the university and some of its administrators and staff may be parties. You set out facts concerning the possibility of litigation between the student and the university.

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You also point out that the Family Educational and Privacy Rights Act, 20 U.S.C., section 1232g, applies to the requested information which may be classified as "education records." You ask whether this circumstance requires you to disclose the information to the student.

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The Family Educational and Privacy Rights Act, also known as the Buckley Amendment, provides in relevant part:

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(a) . . . (1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. . . .

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. . . .

(4)(A) For the purposes of this section, the term 'education records' means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which --

(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.

. . . .

(d) Students' rather than parents' permission or consent. For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of post-secondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

20 U.S.C. §1232g. The act also restricts the release of education records. 20 U.S.C. §1232g(b).

If a university wishes to continue receiving federal funding, it must permit its students to inspect and review their education records. See Attorney General Opinion JM-154 (1984) (private school may lose federal funds if it fails to accord inspection rights under Family Educational and Privacy Rights Act). The legislature has expressly incorporated the requirements of the Family Educational and Privacy Rights Act into the Open Records Act. A 1975 amendment added section 14(e) to the Open Records Act:

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.

Acts 1975, 64th Leg., ch. 314, §1, at 809.

Senate Bill No. 1071 of the Sixty-fourth Legislature enacted this provision to conform state law to the requirements of the Family

Educational Rights and Privacy Act of 1974. Bill Analysis to S.B. No. 1071, prepared for State Affairs Committee, filed in Bill File to S.B. No. 1071, Legislative Reference Library. Both the caption and emergency clause of Senate Bill No. 1071 express this purpose. The caption describes section 14(e) as

conforming state law to the requirements of an Act of Congress known as the Family Educational Rights and Privacy Act of 1974, in order to qualify educational institutions of the State of Texas for federal funding. . . .

Acts 1975, 64th Leg., ch. 314, at 809. The emergency clause of Senate Bill No. 1071 reads in part:

The regulations promulgated by the Secretary of Health, Education and Welfare pursuant to the authority of the Family Educational Rights and Privacy Act of 1974 require, as a condition for federal funding, that educational institutions certify compliance with the provisions of such Act. Without the amendment contained in this bill the educational institutions of the State of Texas cannot make the required certification and will be unable to qualify for federal funds. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency. . . .

Acts 1975, 64th Leg., ch. 314, §2, at 809. The caption and emergency clause of a statute may be considered as guides to legislative intent. Houston Belt & Terminal Railway Co. v. Clark, 143 S.W.2d 373 (Tex. 1940) (emergency clause); Shipley v. Floydada Independent School District, 250 S.W. 159 (Tex. Comm'n App. 1923, judgment adopted) (caption). Section 14(e) thus incorporates the requirements of the Family Educational and Privacy Act into the Open Records Act and makes them prevail over other inconsistent provisions of the Open Records Act. See generally Open Records Decision No. 229 (1979).

The Open Records Act therefore requires that a university student's education records be released to him in accordance with the federal Family Educational and Privacy Rights Act. Section 3(a)(3) of the Open Records Act may not be applied to deny a student his right under the Buckley Amendment, as incorporated into section 14(e) of the Open Records Act, to inspect his education records. Therefore, we need not consider whether you have demonstrated a reasonable likelihood of litigation or, if so, whether the litigation exception would prevail over section 3(a)(14) which gives students at state funded educational institutions a right of access to their "student records."

The list of records requested from Stephen F. Austin appears to consist largely of "education records" within 20 U.S.C. section 1232g. It is possible, however, that the university maintains records on the student which are not "education records" within 20 U.S.C. section 1232g. See 20 U.S.C. §1232g(a)(4)(B) (records excluded from definition of "education records"); Open Records Decision Nos. 229 (1979) (student medical records); 205 (1978) (records of university police department). If you wish to argue that the Open Records Act permits you to withhold particular records not subject to section 14(e) of that act, you should submit the records with your arguments in favor of withholding them.

Very truly yours,



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