



**THE ATTORNEY GENERAL  
OF TEXAS**

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Open Records Decision No. 477

Re: Whether section 3(a)(14) of the Open Records Act, article 6252-17a, V.T.C.S., prohibits a university from disclosing the names of students whose degrees have been rescinded or surrendered

Gentlemen:

Each of you has received the same request for information, and you wish to deny it under the Open Records Act, article 6252-17a, V.T.C.S. The request, submitted by a newspaper reporter, is for:

(1) Listing of all degree recipients of your university, whether bachelor's, master's or doctor's, whose degrees have been revoked, rescinded, cancelled or voluntarily surrendered, since January 1, 1977. Such listing may be in whatever format is available from your files and records.

(2) Correspondence, memoranda and other written documents, between any university representative and the degree recipients referenced above, or with any third party, pertaining directly or indirectly to the revocation, rescission, cancellation or voluntary surrender or any degree encompassed by paragraph (1) above.

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None of you has indicated that any students have voluntarily surrendered their degrees. You have, however, discussed degree revocations. Mr. Schultz's statement on this issue, which Mr. Campbell echoed, follows:

The officials at the University of Texas at Austin have informed me that in those instances where degrees have been revoked the action of the University was based upon events that occurred while the recipient was a student at the University but that these events had not been discovered until the person had graduated and was no longer a student. On the basis of this information, the officials at the University of Texas at Austin contacted Ms. Pat Ballinger . . . and were informed that since the events upon which the revocation of the degrees was based occurred while the persons were registered as students at the University of Texas at Austin the information . . . was protected by [the Buckley Amendment]. (Emphasis added).

We shall base our decision on these facts. We shall, in other words, address only the issue of whether section 3(a)(14) shields the identities of individuals whose university degrees are rescinded because of actions taken by those individuals while they were enrolled at the university. Our discussion should not be construed as implying anything regarding the issue of whether section 3(a)(14) protects the identities of individuals who voluntarily surrender their university degrees or whose degrees are rescinded or surrendered because of actions taken by them after they were no longer registered as students.

You maintain that the identities of individuals whose degrees are rescinded by a university are confidential under the Family Education Rights and Privacy Act, 20 U.S.C. §1232g [hereinafter "Buckley Amendment"], and hence under sections 3(a)(14) and 14(e) of the Open Records Act. Section 3(a)(14) protects

student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, that student's parent, legal guardian, or spouse or a person conducting a child abuse investigation required by Section 34.05, Family Code.

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Section 14(e) states:

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 [Buckley Amendment].

The requestor does not contest the applicability of the Buckley Amendment; rather, he contends that this information is "directory information" within the purview of that statute, which can be released after appropriate notice requirements are met. 20 U.S.C. §1232g(a)(5). The Amendment itself defines "directory information" as

the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

20 U.S.C. §1232g(a)(5)(A). The federal regulations implementing this statute repeat this definition, but also add the phrase "and other similar information." 34 C.F.R. §99.3.

At the outset, we note that our research has uncovered no case law on this issue. We have discussed this matter with Ms. Pat Ballinger, an officer with the United States Department of Education who is charged with interpreting the Buckley Amendment, and she has confirmed the absence of both relevant case law and any official agency position statement on this issue. Ms. Ballinger also stated that, to her knowledge, this question has not heretofore arisen. We must therefore resolve this problem by interpreting the applicable statutes in the manner which, in our judgment, best reflects the intent of the entities which enacted them. See Jessen Associates, Inc. v. Bullock, 531 S.W.2d 593 (Tex. 1976) (fundamental rule of statutory construction is to give effect to legislative intent).

The definition of "education records" in the Buckley Amendment includes

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.

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20 U.S.C. §1232g(a)(4)(A). Given the fact that the events on which degree revocations were predicated took place while the individuals in question were students, we believe the fact of the revocations constitutes "information directly related to" the students which is maintained by the respective universities. We add that we also discussed this issue with Ms. Ballinger, and while we recognize that her statements cannot be construed as official agency interpretations for purposes of the rule that such interpretations are entitled to weight, see, e.g., Ex parte Roloff, 510 S.W.2d 913 (Tex. 1974), her agreement with our position on this matter can hardly be ignored.

The remaining issue is whether this information is "directory" in nature, meaning that it can be disclosed without the student's consent. We answer in the negative. It is true, as the requestor observed, that "directory information" includes "degrees and awards received" and that the definition set out in the federal regulations includes the broad phrase "and other similar information."<sup>1</sup> We also acknowledge that this office has held that the term "directory information" is to be liberally construed. Open Records Decision No. 242 (1980). That degrees awarded by a university constitute directory information, however, in no way requires the conclusion that degrees rescinded by that institution should be so characterized. If one examines the items of information listed in the definitions of "directory information," one sees that the common thread linking them is that they are thoroughly innocuous pieces of information of the type customarily found in public directories. The release of this information would offend no one. The fact that a degree has been rescinded, however, is of an entirely different order. Universities rescind degrees for punitive purposes. Public disclosure of the fact that this step has been taken would be humiliating and offensive to virtually anyone, and would therefore implicate the kind of privacy interest that the Buckley Amendment was designed to protect. This is particularly true if the disclosure comes long after the individual in question has ceased being a student, when he may have established himself as a person of good standing in his community.

We therefore conclude that the information at issue here is protected from required disclosure by the Buckley Amendment and, in turn, by the Open Records Act. In this connection, we note that the universities have not designated this information as "directory information." See 20 U.S.C. §1232g(a)(5)(B) (conferring authority on

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<sup>1</sup>The Department of Education has advised us of its intent to delete this phrase.

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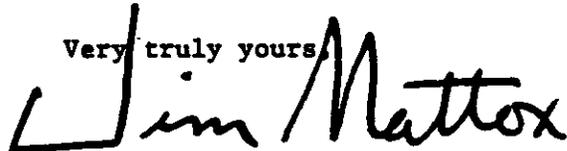
educational agencies to designate information as directory). We finally note that the Education Department official with whom we spoke shares our view on this issue.

As noted, none of you has indicated that any student has voluntarily surrendered a degree. Absent a particular factual context, we cannot determine whether the fact that a degree has been voluntarily surrendered is protected by the Buckley Amendment. The threshold question would be whether such information comprises part of the student's "education records." The next issue would be whether the privacy considerations which dictated our conclusion regarding degree rescissions would be equally applicable in this context. If any of you faces such a situation, advise us of the relevant facts and we will consider the availability of that information.

#### S U M M A R Y

The Family Education Rights and Privacy Act, 20 U.S.C. §1232g, applied through sections 3(a) (14) and 14(e) of the Open Records Act, article 6252-17a, V.T.C.S., prohibits a university from disclosing the identities of persons whose degrees have been rescinded by the university because of events that occurred while those persons were students. We do not address the issue of whether the identity of a student who has voluntarily surrendered his degree is protected from required disclosure, given the lack of an appropriate factual context.

Very truly yours,



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