



**THE ATTORNEY GENERAL
OF TEXAS**

May 18, 1989

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Open Records Decision No. 524

Re: Whether sections 3(a)(14)
and 14(e) of the Open Re-
cords Act, article 6252-17a,
V.T.C.S., prohibit disclosure
of student records after
student's death (RQ-1537)

Gentlemen:

Texas A & M University has received a request under the Open Records Act, article 6252-17a, V.T.C.S., for records pertaining to a student who is now deceased. Carrollton-Farmers Branch Independent School District has also received a request for the records of a deceased student. Texas A & M has submitted the requested records to us. The records requested of the school district are in storage and have not been located yet. You cite sections 3(a)(14) and 14(e) of the Open Records Act as preventing disclosure of these records.

Section 3(a)(14) excepts the following records from disclosure under the Open Records Act:

(14) 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

V.T.C.S. art. 6252-17a, § 3(a)(14).

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

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.

Id. § 14(e).

The Family Educational Rights and Privacy Act (FERPA) provides that no federal funds will be made available to an educational institution that permits the release of education records of students without the written consent of their parents to any individual, agency, or organization other than those specifically designated therein. 20 U.S.C. § 1232g(b)(1). When a student has attained eighteen years of age, or is attending an institution of postsecondary education, the student has the sole authority to consent. Id. § 1232g(d). This statute applies to students who formerly attended an educational institution as well as students presently in attendance. Id. § 1232g(a)(6); 34 C.F.R. § 99.3; Open Records Decisions Nos. 462 (1987); 157, 151 (1977).

Texas A & M University and public schools in Texas receive federal funding and are subject to the requirements of FERPA. See, e.g., Vandiver v. Star-Telegram, Inc., 756 S.W.2d 103 (Tex. App. - Austin 1988, no writ); General Appropriations Act, Acts 1987, 70th Leg., 2d C.S., ch. 78, at 632. The records requested in this case are education records within the Family Educational Rights and Privacy Act and may be released only in accordance with the provisions of that act. Attorney General Opinion MW-565 (1982) (whether files of students at state university are available to federal Department of Labor); see Open Records Decision No. 431 (1985) (information covered by FERPA may not be withheld from student under litigation exception of Open Records Act).

The Secretary of Education has directed the Family Policy and Regulations Office, United States Department of Education, to provide technical assistance to ensure compliance with the Act. 34 C.F.R. § 99.60(b)(2). We referred your question to the director of the Family Policy and Regulations Office and received the following response to our letter:

FERPA restrictions on disclosure of education records do not remain applicable to the records after the death of the student to whom they relate. Consistent with common law regarding privacy rights, the privacy

interests of an individual expire with his or her death.

Accordingly, FERPA does not prevent you from making the education records of deceased students available to members of the public.

We next consider the application to such records of section 3(a)(14) of the Open Records Act, which excepts from public disclosure "student records at educational institutions funded wholly, or in part, by state revenue." Although the purpose for section 3(a)(14) is similar to that of section 14(e), the provisions are not co-extensive. The scope of section 3(a)(14) is a question of statutory construction. Attorney General Opinion JM-851 (1988) (no general rule that statutory confidentiality provisions lapse on the death of the person to whom the confidential records pertain); see Attorney General Opinion JM-229 (1984) (Medical Practices Act implicitly makes physician-patient records confidential after patient's death).

The Open Records Act excepts from public inspection "information deemed confidential by law," including judicial decisions recognizing the right of privacy, and "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" V.T.C.S. art. 6252-17a, §§ 3(a)(1), (2). In Attorney General Opinion H-917 (1976) this office considered whether the confidentiality which subsections 3(a)(1) and 3(a)(2) provide for private information about an individual lapsed upon that individual's death. The opinion cited authorities establishing that the right of privacy is personal to the individual and cannot be asserted by anyone else and concluded that the confidentiality accorded by these subsections to private information in governmental records lapsed upon the death of the person who was the subject of records.

The exception for student records in section 3(a)(14) was included in the Open Records Act out of concern that section 3(a)(2), the "personnel file" exception, would not cover the confidential information found in student records. See Comment, The Texas Open Records Act: A Section-By-Section Analysis, 14 Hous. L. Rev. 398, 420 n.184 (1977). Thus, section 3(a)(14) derives from the same common law privacy right incorporated in section 3(a)(2) of the Open Records Act but extends its protection to a broad class of records that might not be confidential in its entirety under common law. Based on this legislative history, and on the federal interpretation of the Family Education Rights and Privacy Act, we believe that the confidentiality accorded student records by section 3(a)(14) terminates on the death

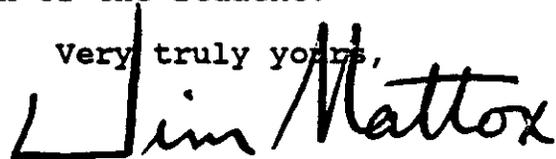
of the person who was the subject of the records. Accordingly, the records of deceased students that have been requested are not excepted from public disclosure by section 3(a)(14) of the Open Records Act and must be provided to the requestor.

It is possible that particular records include student record information about a living person as well as a deceased person. In that case, the records should be edited to avoid disclosure of the student record information about a living person, which is still protected by section 3(a)(14). We have marked the records submitted by Texas A & M University to show which documents may not be disclosed.

S U M M A R Y

The confidentiality accorded student records by section 3(a)(14) of article 6252-17a, V.T.C.S., the Texas Open Records Act, and by the federal Family Education Rights and Privacy Act, 20 U.S.C. § 1232g, terminates upon the death of the student.

Very truly yours,



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