



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

June 13, 1989

Mr. James R. Lindley
General Counsel
American Educational Complex System
P. O. Box 1432
Killeen, Texas 76540

Dear Mr. Lindley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 6158; this decision is OR89-177.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

The American Educational Complex System (AECS) received a request for a copy of the names of students placed on a readmission list by the AECS Admissions and Standing Committee. You provided for review the list of the students used by the committee and a copy of the minutes of the committee meeting where the list was discussed. You advise that the list contains the names of students who received poor or failing grades and who have been considered for readmission, and you contend that this information is protected from required disclosure by section 3(a)(11) of the Open Records Act.

Section 3(a)(11) protects inter-agency or intra-agency memoranda which would not be available by law to a party other than one in litigation with the agency. The test under 3(a)(11) is whether inter-agency or intra-agency

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information that consists of advice, opinion or recommendation is used in the agency's executive deliberative process.

The information at issue is clearly intra-agency information. However, section 3(a)(11) only protects advice, opinion, or recommendation that aids in the governmental body's decision-making process. The list you have provided is not advice, opinion or recommendation. It is a factual compilation of students under consideration for readmission. Section 3(a)(11) does not protect facts or written observations of facts or events. Open Records Decision No. 464 (1987). Further, while readmission of the students in question may have been the subject of some consideration by the Admission and Standards Committee, you do not demonstrate how the list, by itself, aided in the committee's decision-making process. This list of students is not protected under section 3(a)(11). See Open Records Decision No. 485 (1987).

Although you do not raise section 3(a)(14) of the Open Records Act, because release of the information at issue affects the rights of students, we will raise this exception on your behalf. Section 3(a)(14) protects from disclosure subjective personal information about students. Section 14(e) of the act provides:

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 Buckley Amendment].

See also art. 6252-17a, § 3(a)(14).

The Buckley Amendment prevents the release of "personally identifiable" information about students contained in records maintained by an educational institution. Personally identifiable information includes a student's name, address, a personal identifier, such as a social security number, or any other information that would make the student's identity easily traceable. See 34 C.F.R. § 99.3 (1988). The purpose of the the Buckley Amendment is to protect information that would be harmful or an invasion of personal privacy if disclosed. See id. (definition of "directory information"); see also 34 C.F.R. § 99.2. Under

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the circumstances for which this list was compiled, we believe that this is the type of information the Buckley Amendment was designed to protect. You may withhold the list of names and any other information that identifies these students under sections 3(a)(14) and 14(e).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR89-177.

Yours very truly,

Open Government Section 
of the Opinion Committee

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of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/FAF/bc

Ref. ID# 6158