



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 10, 1989

Mr. W. O. Shultz, II
General Attorney and
Associate General Counsel
University of Texas System
201 West 7th Street
Austin, Texas 78701

Dear Mr. Shultz:

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# 6071; this decision is OR89-196.

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 University of Texas System has received two requests for the names of students and families participating in University of Texas at El Paso Host Family Program and a request for information related to violations of the rules of the National Collegiate Athletic Association involving student athletes. You assert that this information is protected from required public disclosure by sections 3(a)(1) and 3(a)(14) and by section 14(e), which incorporates the Family Educational Rights and Privacy Act of 1974, 20 United States Code, § 1232g.

Sections 3(a)(14) and 14(e) protect student records. In Open Records Decision No. 447 (1986), this office determined that section 14(e) protects information about identifiable student athletes in correspondence from the University of Texas Athletic Department to the National

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Collegiate Athletic Association. Informal decision OR88-171 (1988) concluded that information pertaining to drug tests performed on student athletes is protected when specific student athletes can be identified in the information. These decisions govern the information at issue concerning the student athletes. You should withhold this information.

Similarly, section 14(e), in conjunction with the Family Educational Rights and Privacy Act, protects not only information directly relating to students, but also any "personally identifiable" information. "Personally identifiable" information includes a list of personal characteristics that would make the student's identity easily traceable, or other information that would make the student's identity easily traceable. See 34 C.F.R. § 99.3(e) and (f) (1988). Consequently, you may not disclose information concerning students participating in the University's Host Program or information concerning the families participating in the program without the consent of students in question.

Given our conclusion that sections 3(a)(14) and 14(e) of the Open Records Act protect the information at issue, it is not necessary to address your concerns about section 3(a)(1). 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 OR89-196.

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

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