



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 5, 1989

Ms. Lynn Rossi Scott
Rohne, Hoodenpyle, Lobert & Myers
1323 West Pioneer Parkway - Spur 303
Arlington, Texas 76013

Dear Ms. Scott:

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# 7718; this decision is OR89-412.

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. Attorney General Opinion H-436 (1974). 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 Grapevine-Colleyville Independent School District received a request from a parent for information about the school's discipline of his son and about the school's discipline practices regarding other students. The district indicates that the information exists in individual student files and in a cumulative computer data bank. The district has the capacity to produce the data in hard copy. Both forms are subject to the Open Records Act. You contend that section 3(a)(1) and 3(a)(14) protect the information from required disclosure.

Section 3(a)(14) of the Open Records Act 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.

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 Family Educational Rights and Privacy Act of 1974 is informally known as FERPA.

FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that:

1. denies the parents of students the right to inspect and review the education records of their children;

2. does not give parents a right to challenge the content of a student's education records;

3. releases education records (or personally identifiable information contained therein other than directory information) of students without the written consent of the parents to anyone but certain numerated federal, state, and local official's and institutions.

See 20 U.S.C. § 1232g (a)(1)(A), (a)(2), (b)(1). "Education records" means those records 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." Id. § 1232g (a)(4)(A). The requestor here clearly is entitled to obtain education records about his son.

Your primary concern is with the release of education records that identify other students. You ask whether you must seek the consent of other parents. The only reported

Ms. Lynn Rossi Scott
December 5, 1989
Page 3

state court decision to address the applicability of sections 3(a)(14) and 14(e) is Vandiver v. Star-Telegram, 756 S.W.2d 103 (Tex. App. - Austin 1988, no writ). In Star-Telegram, a newspaper sought a writ of mandamus to compel disclosure of records concerning the recruitment of a high school student by Texas A & M University. Because the university failed to seek an opinion from the attorney general, the requested information was presumed public, shifting the burden to the university to produce evidence to show why the information was not public. The court noted that under FERPA, as incorporated in section 14(e), education records should not be released without the student's or parent's consent. Id. at 107. The court held that under sections 3(a)(14) and 14(e), the university had the burden of showing that neither the student nor his parents consented to the release of the information. Id. That case suggests that the district may have an affirmative duty to seek the other parents' consent to disclosure.

Assuming that the parents do not consent to release of the information, or if the requestor agrees to narrow his request, the student's names should be deleted. To make the information more valuable to the requestor, the names could be deleted in a block fashion to indicate approximately where a new name appears, as shown on the enclosed copies. As edited, the information must be released.

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 OR89-412.

Yours very truly,

*Open Government Section
of the Opinion Committee*

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

JSR/le

Ref.: ID# 7718

Enclosure: marked documents

cc: Mr. Victor Sansone
4005 Mockingbird Lane
Colleyville, Texas 76034