



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 22, 1990

Mr. Jerome H. Supple
President
Southwest Texas State University
San Marcos, Texas 78666-4615

OR90-509

Dear Mr. Supple:

By letter of October 4, 1990, you referred to us a request under the Texas Open Records Act, V.T.C.S. art. 6252-17a, for all information about a former student's claim of sexual abuse by a university employee who was terminated after the events at issue. The former student's attorney requested the records pursuant to the client's written authorization. Your letter forwarding this matter to us was designated ID# 10757.

You enclose copies of the following records as responsive to the request:

- (1) a counselor's notes from interviews with the former employee;
- (2) investigation records prepared and maintained by the university police department;
- (3) the personnel files of the former employee; and
- (4) the former student's files maintained by the university office that operates the Youth Opportunities Unlimited program on the Southwest Texas campus.

The Family Educational and Privacy Rights Act, 20 U.S.C. Section 1232g, is relevant to this Open Records matter because some of the information relates to the former student's relationship to the university. In addition, the former employee was also a student at the university for a time, and some of the records relate to the latter status. Information subject to the requirements of the Family Educational Rights and Privacy Act (FERPA) may be disclosed

or withheld only in conformity with the requirements of that statute. V.T.C.S. art. 6252-17a, § 14(e); Open Records Decision No. 431 (1985). Thus, an individual's "education records" may not be withheld from him pursuant to an exception to disclosure under the Open Records Act. Id.

The former student's files mentioned in item (4) includes her application for the Youth Opportunities Unlimited program, records of her performance in that program, and her high school records. This information is available to the former student. We have marked this portion of the records as governed by 20. U.S.C. Section 1232g.

The records of the university police department contain information concerning both the former student and the former employee. The university attorney has informed us that the records of the university police department concerning students are maintained apart from education records in accord with the requirements of section 1232g(a)(4)(B)(ii) of title 20, United States Code. See Open Records Decision No. 205 (1978). If records pertaining to students maintained by the university police department are kept strictly separate from the university's academic records, and if they are not available to anyone else except law enforcement agencies of the same jurisdiction, they are not subject to a student's right of access under FERPA, nor are they available to the general public under the Texas Open Records Act. Id. Accordingly, these records are not available to the former student pursuant to FERPA.

Having determined the extent to which FERPA allows the former student access to the records requested on her behalf, we turn to your claim that section 3(a)(3) of the Open Records Act, the litigation exception, applies to the rest of the requested information. You have enclosed a letter from the former student, stating that she has decided to file suit against the university. On the basis of this letter, and of the fact that she has hired an attorney, we agree that litigation is reasonably anticipated. We have examined the documents, and agree that they are excepted from disclosure by section 3(a)(3) of the Open Record Act. See Open Records Decision No. 551 (1990).

Accordingly, you may withhold all the requested records, except for the former student's application and the related academic materials. If you receive a request under the Open Records Act for any of this information after the litigation has come to a conclusion, it will be necessary at that time to consider the relevance of FERPA to records of

the former employee's student status and of rights of personal privacy recognized under section 3(a)(1) of the Open Records Act.

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 OR90-509.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/le

Ref.: ID# 10757

Enclosure: Open Records Decision Nos. 205, 431, 551
Documents Submitted

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