



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 30, 1992

**Mr. Robert J. Provan
General Counsel
Texas State University System
Board of Regents
505 Sam Houston Building
Austin, Texas 78701**

Open Records Decision No. 612

Re: Whether arrest and offense reports filed with state university campus police departments are excepted from required public disclosure pursuant to Open Records Act sections 3(a)(14) and 14(e) (RQ-462)

Dear Mr. Provan:

Pursuant to the Texas Open Records Act, V.T.C.S. article 6252-17a, Sam Houston State University and Stephen F. Austin State University have received requests for disclosure of the incident and arrest reports kept on file and created by the respective university campus police departments. The Texas State University System claims that these records are deemed confidential educational records by the Family Educational and Privacy Rights Act (FERPA), 20 U.S.C. § 1232g, and therefore, that these records are excepted from required public disclosure by Open Records Act sections 3(a)(1) and 14(e). You also claim these records are excepted pursuant to section 3(a)(14).

FERPA provides that no federal funds shall be made available to any educational agency or institution that has a policy or practice of releasing student's "education records" without the written consent of the student or the student's parents. 20 U.S.C. §§ 1232g(b)(1), 1232g(d). Open Records Act section 14(e) incorporates by reference these FERPA requirements 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.

In Open Records Decision Nos. 342 (1982) and 205 (1978), this office ruled that university police records were education records for the purposes of FERPA, and therefore pursuant to Open Records Act section 14(e) such records which related to an identifiable student could not be released to the public without the student's written consent. However, effective July 23, 1992, FERPA was amended to expressly state: "The term 'education records' does not include -- . . . (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law

enforcement unit for the purpose of law enforcement." Higher Education Amendments of 1992, Pub. L. No. 102-325, tit. XV, pt. H, § 1555(a), 106 Stat. 448 (July 23, 1992) (to be codified at 20 U.S.C. § 1232g(a)(4)(B)(ii)). This amendment applies to all university campus police department records "maintained" after July 23, 1992.

On the basis of this amendment we conclude that the requested incident and arrest reports of the state university campus police departments are not education records for the purposes of FERPA; and such records are not excepted from required public disclosure by Open Records Act sections 3(a)(1) and 14(e). Furthermore, this amendment to FERPA, effectively supersedes Open Records Decision Nos. 342 and 205.

You also claim that the requested records are excepted by Open Records Act section 3(a)(14) which excepts from required public disclosure "student records at educational institutions funded wholly, or in part, by state revenue." We conclude that university campus police department arrest and offense records are not "student records" within the meaning of section 3(a)(14).

The exception for student records in section 3(a)(14) was included in the Open Records Act to exclude from required public disclosure confidential information contained in student records. *See Comments, The Texas Open Records Act: A Section-By-Section Analysis*, 14-1 HOUS. L. REV. 398, 420 n.184 (1977). In Attorney General Opinion H-447 (1974), at 2 this office defined "student record" for the purposes of section 3(a)(14) as follows:

it is our opinion that a "student record" would generally include information concerning the student himself and his individual relationship to the educational institution. A list of student records would include, but not necessarily be limited to, the following: applications for admission; standardized achievement test scores, attendance data, scores on standardized intelligence, aptitude, and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and reports of behavioral patterns or disciplinary actions.

University campus police offense and arrest reports do not fit within any of these accepted categories of "student records." The university police reports describe campus crimes and incidents, and thus the subjects of the reports are not necessarily students. When the reports do mention identifiable students, the student is referred to as either a victim of a crime, a witness to a crime, or perhaps a perpetrator; such reports do not generally reflect on the student's academic relationship to the educational institution or other regular extra-curricular activities associated with attendance at an educational institution.

The Texas courts and this office have previously ruled that police offense and arrest reports are public records, subject to certain limitations for law enforcement concerns, such as where release of particular information may impede an on-going investigation or where release of particular information may raise safety concerns for confidential informants. See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 186 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision Nos. 508 (1988); 474 (1987); 397, 394, 378, 366 (1983); 339 (1982); 216 (1978). We see no reason for distinguishing the offense and arrest records of a university campus police department from those of police departments generally. We therefore conclude that university campus police department offense and arrest records are not "student records" within the meaning of section 3(a)(14).¹

S U M M A R Y

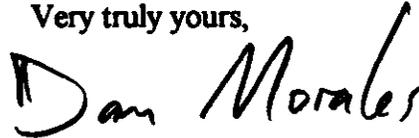
The arrest and incident reports created and maintained by state university campus police departments are not education records within the meaning of the federal Family Educational Rights and Privacy Act, as amended by the Higher Education Amendments of 1992, 20 U.S.C. § 1232g(a)(4)(B)(ii), and therefore such police reports are not excepted from required public disclosure by Open

¹We also note that if "student records" within the meaning of Open Records Act section 3(a)(14) were construed to except from public disclosure university police department records, there would be a substantial issue concerning section 3(a)(14)'s constitutionality. At least three courts have ruled that the public has a First Amendment right of access to police arrest and offense records. See *Student Press Law Center v. Alexander*, 778 F. Supp. 1227, 1233-34 (D.D.C. 1991) (holding that the public had a First Amendment right of access to university police department arrest and offense records); *Bauer v. Kincaid*, 759 F. Supp. 575, 593-95 (W.D. Mo. 1991) (holding that the public has a First Amendment right of access to university police records and relying in part on *Houston Chronicle*); *Houston Chronicle*, 531 S.W.2d at 186 (holding that the press and the public have a First Amendment constitutional right of access to information concerning crime in the community, and to information relating to activities of law enforcement agencies, including a right of access to police offense and arrest reports). *Contra Norwood v. Slammons*, 788 F. Supp. 1020, 1026-28 (W.D. Ark. 1991) (holding that the First Amendment does not guarantee right of access to government records concerning crime in the community and activities of law enforcement agencies: "The First Amendment prohibits the 'government' and its officials from restricting the public's (and the media's use) of information gathered by them, but it does not require that the 'government' and its officials aid in the gathering of such information"). The Texas Supreme Court in its order denying its writ of error in *Houston Chronicle* expressly reserved the issue whether the public has a First Amendment right to police arrest records; therefore the Texas Supreme Court has not yet spoken on the issue. 536 S.W.2d at 560.

Records Act section 14(e). Open Records Decision Nos. 342 (1982) and 205 (1978) ruling that such records are education records and excepted by section 14(e) are superceded.

Such records are not "student records" within the meaning of Open Records Act section 3(a)(14).

Very truly yours,

A handwritten signature in black ink that reads "Dan Morales". The signature is written in a cursive style with a large, prominent "D" at the beginning.

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