



Office of the Attorney General
State of Texas

March 8, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Scott A. Kelly
Assistant General Counsel
The Texas A&M University System
College Station, Texas 77843-1230

OR93-087

Dear Mr. Kelly:

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# 18762.

Texas A&M University (the "university") has received two requests for information relating to allegations of National Collegiate Athletic Association (NCAA) violations involving students of the university. In his first request, the requestor seeks telephone records for university athletic director and assistant athletic director for recruiting from November 1, 1992, through December 31, 1992. You advise us that this information will be released to the requestor. In his second request, the requestor seeks

1. Any and all written reports prepared for presentation to the National Collegiate Athletic Association (NCAA) concerning allegations some Texas A&M football players were paid year round by booster Warren A. Gilbert Jr. of Dallas for work not performed.
2. Any and all supporting documents submitted or shown to NCAA personnel.
3. Any and all transcripts of interviews with any student-athlete questioned in connection with the university's internal investigation of the Gilbert matter.
4. Any and all statements signed by or obtained from Mr. Gilbert during the university's internal investigation of the matter.
5. Any and all transcripts of interviews or statements obtained from any member of the football coaching staff, athletic administration or university administration in connection with the Gilbert matter.

You advise us that the university is not in possession of information responsive to items 3, 4, and 5 above.¹ You object, however, to release of some of the information requested in items 1 and 2, claiming that it is excepted from required public disclosure by sections 3(a)(14) and 14(e) of the Open Records Act.² You have marked the information you seek to withhold and advise us that the remaining information will be released to the requestor.

Section 14(e) incorporates another source of law, specifically, the requirements of the Family Educational Rights and Privacy Act (FERPA), into the Open Records Act, providing:

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.

V.T.C.S. art. 6252-17a, § 14(e); *see also* Open Records Decision No. 431 (1985) (copy enclosed). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section, of students without the written consent of their parents to any individual, agency, or organization.

20 U.S.C. § 1232g(b)(1). "Education records" are 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). In Open Records Decision No. 462 (1987), this office held that a university's correspondence regarding violations of NCAA rules by its students are education records. However, sections 3(a)(14) and 14(e) may not be used to withhold

¹The Open Records Act does not require a governmental body to make available information not in its possession. *See* Open Records Decision No. 362 (1983).

²You initially claimed that section 3(a)(11) excepted some of the information from disclosure. You subsequently withdrew the portion of your open records opinion request dealing with section 3(a)(11). Accordingly, we will not address section 3(a)(11).

entire documents; the university must delete information only to the extent "reasonable and necessary to avoid personally identifying a student" or one or both of his parents. Open Records Decision Nos. 332 (1982); 206 (1978). Thus, only information identifying or tending to identify students or their parents must be withheld from required public disclosure.

You have submitted to us for review a copy of the report filed by the university with the NCAA. You claim that only the names of students mentioned in the report are excepted from required public disclosure by sections 3(a)(14) and 14(e) of the Open Records Act, and you have marked these names in yellow. We have examined the report and conclude that the information marked in yellow must be withheld under sections 3(a)(14) and 14(e). The remaining information must be disclosed.

Because 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 OR93-087.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SLG/GCK/lmm

Ref.: ID#s 18762; 18808
ID#s 18812; 18861

Enclosure: Open Records Decision No. 431

cc: Mr. Doug Bedell
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