



Office of the Attorney General
State of Texas

November 30, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. James R. Raup
McGinnis, Lochridge & Kilgore, L.L.P.
1300 Capitol Center
919 Congress Avenue
Austin, Texas 78701

OR93-724

Dear Mr. Raup:

As counsel for Austin Community College (the "college"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code (formerly V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 22603.

The college received an open records request for certain documents, most of which you have produced, but you claim that the "papers of students who were instructed [and graded] by teachers other than the requestor should not be disclosed." The college claims that these documents are student educational records and must be kept confidential pursuant to sections 552.026 and 552.114 (formerly sections 3(a)(14) and 14(e)) of the act.

Section 552.114 excepts from disclosure "information in a student record at an educational institution funded wholly or partly, by state revenue." Section 552.026 (formerly section 14(e)) of the act provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub.L. No. 93-380, 20 U.S.C. Sec. 1232g.

The Family Educational Rights and Privacy Act of 1974, which is informally known as "the Buckley Amendment," provides that no federal funds will be made

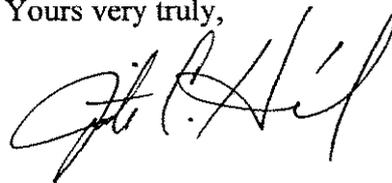
¹We note that the Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

available under any applicable program to an educational agency or institution that releases education records (or personally identifiable information contained therein other than properly processed directory information) of students without the written consent of the parents to anyone but certain enumerated federal, state, and local officials and institutions. See 20 U.S.C. §§ 1232g(b)(1) and (5). "Education records" means those records that "contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution." *Id.* at § 1232g(a)(4)(A).

For purposes of the Buckley Amendment, the records at issue here are graded student essays, and they constitute "education records" to the extent that they contain information about identifiable students who are enrolled in two particular classes of two instructors at the college. In Open Records Decision No. 214 (1979), this office held that a class paper prepared by a group of students was protected from disclosure as a student record. This information must be withheld from required public disclosure pursuant to section 552.114 only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982); 206 (1978) *see also Kneeland v National Collegiated Athletic Assoc.*, 650 F. Supp. 1076, 2090 (W.D. Tex. 1986) (educational records are public where personally identifiable information is deleted), *rev'd on other grounds*, 850 F.2d 224 (5th Cir. 1988). This office has previously held that personally identifiable means "whether the information given would make the student's identity easily traceable." Open Records Decision No. 165 (1977) at 5. Even if the information does not identify the individual students, but there is a relatively small number of students to whom it could be applicable, the student records may be withheld. Open Records Decision No. 294 (1981). In this instance, the students who wrote these papers in these two instructors' courses could be easily traceable, and therefore the papers should be withheld as education records.²

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 contact our office.

Yours very truly,



Juanita C. Hernandez
Special Assistant Attorney General
Open Government Section

² In addition, it is not indicated whether the student papers at issue are handwritten. In Open Records Decision No. 214 (1978), we held that handwritten student evaluations of an instructor were easily traceable because of the handwriting, type of expression, and incidents related in the comments.

JCH/LRD/rho

Ref.: ID# 22603

cc: Mr. Richard Manson
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