



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1993

Ms. Susan G. Spinks
Assistant University Counsel
University of Houston System
1600 Smith, Suite 3400
Houston, Texas 77002

OR93-759

Dear Ms. Spinks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).¹ Your request was assigned ID# 20347.

The University of Houston System (the "university") has received a request for information relating to certain university employee evaluations. Specifically, the requestor seeks "access to all [School of Education] annual evaluations for 1991 and 1992." You have submitted representative samples of the requested information to us for review. You claim that the requested information is excepted from required public disclosure by former section 3(a)(11) of the Open Records Act (now found at section 552.111 of the Government Code).

We note at the outset that some of the information submitted to us for review appears to identify students. Although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision Nos. 455 (1987); 325 (1982), we will raise section 552.101 because the release of confidential information could impair the rights of third parties and because improper release constitutes a misdemeanor. *See* Gov't Code § 552.352. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The federal Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, provides, in pertinent part:

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 educational records (or personally identifiable information contained therein other than

¹The Seventy-Third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988.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.

directory information, as defined in paragraph (5) of subsection (a...) 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:

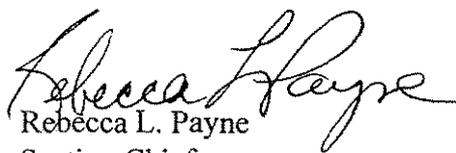
- (i) contain information directly related to a student; and
- (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

Id. § 1232g(a)(4)(A). FERPA may not be used to withhold 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. *See generally* 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.

We next address your claim that the requested information is excepted from required public disclosure by section 552.111 of the Government Code. In *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), the Third Court of Appeals recently held that former section 3(a)(11) "exempts those documents, and only those documents, normally privileged in the civil discovery context." *Gilbreath*, 842 S.W.2d at 413. In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 552.111 exception in light of the *Gilbreath* decision, holding that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the deliberative or policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. As the information submitted to us for review relates to an internal administrative and personnel matter, we conclude that section 552.111 does not except it from required public disclosure. Accordingly, except as noted above, the requested information must be released in its entirety.

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 this office.

Yours very truly,


Rebecca L. Payne
Section Chief
Open Government Section

RLP/GCK/Imm

Ref.: ID# 20347

Enclosures: Open Records Decision No. 615
Submitted documents

cc: Mr. Paul A. Wagner
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(w/o enclosures)