



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 19, 1994

Mr. Michael H. Corley
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2981

OR94-458

Dear Mr. Corley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 27187.

You have received a request for information pertaining to two accounting courses the University of Texas College of Business Administration offers, Accounting 360k.6 and Accounting 361. Specifically, the requestor seeks the following:

a) Course rosters and the raw data which were used to determine . . . grades [for the courses]; and

b) In lieu of the students' names, which should be kept confidential, associated with the rosters and the raw data, we would like to get the six characteristics of these students . . . , i.e., (1) their race, (2) their gender, (3) their Accounting major G.P.A., (4) their overall G.P.A., (5) how many Accounting credits they have so far completed, and (6) how many total U.T. credits they have so far completed.

You initially contend that, to comply with this request, the University of Texas at Austin (the university) must "extract information maintained in various files or databases and actually prepare a document or chart" that currently is nonexistent. You state that the university can compile, from existing data, the information concerning each of the students enrolled in the two courses about which the requestor asks, but to do so "will require manually locating information for each student in the respective class and then compiling the specific requests into a table or chart for the requestor." You contend that the Open Records Act does not require a governmental body to present information in the format requested.

We agree that the university need not prepare information in a form requested by a member of the public, Attorney General Opinion JM-672 (1987) at 5 (citing Open Records Decision No. 145 (1976)), but we do not see that the requestor seeks tables or charts. Further, although the Open Records Act does not require a governmental body to compile or prepare new information, Open Records Decision No. 605 (1992) at 2, it requires a governmental body to make a good-faith effort to relate a request to information in the possession of the governmental body, Open Records Decision No. 561 (1990) at 8. Thus, if the university can assemble the requested information using records in its possession, it must do so.

You contend that the requested information is exempt from disclosure under section 552.026 of the Government Code and the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g.¹ Section 552.026 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.

Section 552.026 of the Government Code governs the release of student records by an educational institution that receives federal funds under any program the federal government administers. See Open Records Decision No. 480 (1987) at 3 (quoting Open Records Decision No. 427 (1985)). We assume that the university receives federal funds under at least one program that the federal government administers.

FERPA provides that no federal funds will be made available under an applicable program to an educational agency or institution that releases to anyone but certain enumerated federal, state, and local officials and institutions personally identifiable information (other than directory information) contained in a student's education records unless the student has authorized otherwise. See 20 U.S.C. § 1232g(d). "Education records" consist of those records that contain information directly related to a student and that an educational agency or institution or a person acting for such agency or institution maintains. *Id.* § 1232g(a)(4)(A).

For the purposes of FERPA, the term "directory information" relating to a student includes: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height if the student is a member of an athletic team, dates of attendance, degrees and

¹You also raise section 552.114 of the Government Code, which excepts from required public disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). To the extent that section 552.114 would provide a result different from the result FERPA provides, FERPA prevails. See Open Records Decision No. 431 (1985) at 3. Consequently, we need not consider section 552.114 here.

awards received, and the most recent previous educational agency or institution the student attended. *Id.* § 1232g(a)(5)(A). Correspondingly, the Office of the Secretary of Education has defined the term "directory information" as

information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, . . . [repeating list verbatim from 20 U.S.C. § 1232g(a)(5)(A)].

34 C.F.R. § 99.3. An educational agency or institution that makes public directory information must comply with the notice provisions in 20 U.S.C. § 1232g(a)(5)(B).

We will consider first whether the university must release the requested course rosters. In Open Records Decision No. 244 (1980) at 2 this office concluded that, based upon the definition of "directory information" in the predecessor to section 99.3, title 34 of the Code of Federal Regulations, the roster of students enrolled in certain courses at Ranger Junior College is directory information. The decision accordingly required the junior college to notify the students in accordance with section 1232g(a)(5)(B), *see also* 34 C.F.R. § 99.37(a), and subsequently to release the information to which no appropriate objection was filed. Open Records Decision No. 244 at 2.

At the time this office issued Open Records Decision No. 244, the regulation defined "directory information" by repeating the types of information section 1232g(a)(5)(A) lists as directory information and adding the phrase to the end "and other similar information." Since that time, the Department of Education has amended the regulation to delete the phrase "and other similar information" and add, preceding the statutory list of directory information, a statement that the list "includes, but is not limited to" the items that follow. In our opinion, this amendment does not affect the conclusion of Open Records Decision No. 244 that a course roster is directory information. Furthermore, we do not believe that a course roster is information that one would consider harmful or an invasion of the student's privacy. *See also* Open Records Decision No. 477 (1987) at 4 (stating that common thread linking all listed examples of directory information "is that they are thoroughly innocuous pieces of information of the type customarily found in public directories"). Accordingly, we conclude that the university must release the requested course rosters to the requestor.

We next consider whether the university must release to the requestor the raw data the instructor used to determine the grades the students in these courses received. We understand the requestor to mean the numerical scores the instructor used to determine the grading curve for the class. Certainly, this information is an education record for purposes of FERPA. FERPA does not require an educational agency or institution to withhold all education records, however; it prohibits the release only of personally identifiable information. "Personally identifiable information" is information that directly identifies a particular student or that makes the identity of a particular student easily traceable. *See* 34 C.F.R. § 99.3.

You contend that the raw data is personally identifiable information because each of these two classes is small. You state, "Even if each student's name were redacted prior to the release of the information in the format requested, the small size [of] the two classes could easily reveal the identity of the students once the other data is disclosed." We understand the requestor to seek a deidentified list of the raw data.

While the small size of the class might make a particular student's identity easily traceable from the raw data, *see* Open Records Decision No. 352 (1982) at 5, we are unable to determine whether this is in fact so because you have failed to submit copies of the information to our office. *See* Gov't Code § 552.303 (requiring governmental body, when it requests attorney general's decision as to the availability of particular information under Open Records Act, to supply attorney general with specific information requested). If you decide to withhold certain information from the requestor and he objects, "we will accept a request to determine the issue of whether the specific information deleted is excepted from public disclosure."² Open Records Decision No. 351 (1982) at 5-6 (quoting Open Records Decision No. 206 (1978)).

Finally, we consider whether the university must withhold from the requestor the information listed in request (b): each of the student's race, gender, accounting major grade point average, overall grade point average, the number of accounting credits he or she has completed, and the number of total university credits he or she has completed. We assume that the requestor is not seeking general statistical data for the two courses, *e.g.*, the percentage of each ethnic group or gender represented in the two classes. This office has noted in a previous decision that in some instances the disclosure of a student's ethnic background may make the identity of that student easily traceable. Open Records Decision No. 206 (1978) at 2 (citing Open Records Decision No. 165 (1977)). The disclosure of a student's gender likewise may make the identity of a student easily traceable. We believe this is especially likely where the number of students involved is small. *See* Open Records Decision Nos. 352 at 5; 294 (1981) at 2.

Because you have failed to submit copies of any of the requested information, however, we are unable to conclude whether the disclosure of the requested information would identify particular students or make a particular student's identity easily traceable. If you decide to withhold certain information from the requestor and he objects, "we will accept a request to determine the issue of whether the specific information deleted is excepted from public disclosure."³ Open Records Decision No. 351 at 5-6 (quoting Open Records Decision No. 206 (1978)).

²If the university releases the requested raw data, it must do so in a manner that will preclude the requestor from tying the roster to the data.

³If the university releases the information the requestor lists in request (b), it must do so in a manner that will preclude the requestor from tying the roster to the data.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an 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,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

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Ref.: ID# 27187

cc: Mr. M. Engin Derkunt
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of Colored People (NAACP)
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