



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 24, 1997

Ms. Joanna L. Harkey
Associate General Counsel
Texas Tech University
3601 4th Street
Lubbock, Texas 79430-0001

OR97-0416

Dear Ms. Harkey:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103837.

Texas Tech University Health Sciences Center (the "center") received a request from a former student for all information concerning him. You contend that some of the documents responsive to the request are confidential under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, and section 552.114 of the Government Code. You also assert that sections 552.107 and 552.111 are applicable to other documents.¹ You have submitted the records at issue to this office for review.

You assert that records provided under Tab 1 are records of students other than the requestor and, as such, must be redacted to protect the student identities. We note initially that, since the requestor has asked only for records pertaining to him, it does not appear that the information concerning other students is responsive to the request. Also, the center may withhold from disclosure information that is protected by FERPA or section 552.114 without the necessity of requesting a decision from this office. Open Records Decision No. 634 (1995). However, we will address your assertions concerning the documents under Tab 1.

Section 552.114 exempts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 exempts from disclosure educational records unless released in conformity with the Family Educational

¹You asserted that section 552.101 of the Government Code protects from disclosure certain information within the attorney-client privilege. We note that this exception is properly raised under section 552.107(1) of the Government Code. Open Records Decision No. 574 (1990) at 2 (attorney-client privilege specifically covered under section 552.107(1)); *see also* Open Records Decision No. 630 (1994) (section 552.17(1) can be waived if not timely raised).

Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g. FERPA provides that federal funding shall not be made available to "any educational agency or institution which has a policy or practice of permitting the release of educational records" of students without the written consent of the parents of a minor student. 20 U.S.C. § 1232g(b)(1). If the student is 18 years of age or older or attends a postsecondary educational institution, the student must give written consent to allow the release of education records. *Id.* § 1232g(d). A review of the documents submitted under Tab 1 indicates that they are "education records." Education records are those records that "contain information directly related to a student and are maintained by an educational agency or institution." *Id.* § 1232g(a)(4)(A). The center may not release the records under Tab 1 to the extent that they identify students other than the requestor.²

You assert that the records under Tab 2 are excepted from disclosure pursuant to section 552.111 of the Government Code. However, FERPA provides that federal funding shall not be made available "to any educational agency or institution which has a policy of denying, or which effectively prevents" a minor student's parents from inspecting and reviewing education records. *Id.* § 1232g(a)(1)(A). A student who is 18 years of age or older or attends a postsecondary educational institution has the same right of access to education records. *Id.* § 1232g(d). Section 552.111 of the Government Code does not provide an exception from the FERPA mandatory access provisions.

You assert that that the other records at issue are excepted from disclosure pursuant to the attorney-client privilege protected under sections 552.107(1) and 552.111 of the Government Code. We note that the records at issue include the requestor's own education records, which may not be excepted from disclosure pursuant to section 552.111. We will address your section 552.107(1) argument.

Enclosed is a letter from the United States Department of Education, which informed this office that FERPA does not require an educational institution to permit inspection and review of records protected under the attorney-client privilege as provided under section 552.107(1) of the Government Code. Section 552.107(1) thus protects from disclosure any responsive information that reveals client confidences to an attorney or that reveals the attorney's legal advice, opinion, and recommendation. *See* Open Records

² Section 552.114 requires that "information in a student record at an educational institution funded wholly or partly by state revenue" must be withheld, but may be made available on the request of the student or other authorized person. Section 552.026 provides as follows:

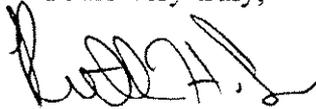
This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974

The term "student record" in section 552.114 has been generally construed to be the equivalent of "education record." *See generally* Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982).

Decision No. 574 (1990). We have marked the information in the documents submitted that may be protected from disclosure pursuant to section 552.107(1). The remaining information that is not otherwise confidential must be disclosed.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 103837

Enclosures: Submitted documents

³We noted that some of the information for which you asserted section 552.107(1) contains identifying information about other students.