



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 28, 1997

Ms. Nancy Nelson
Director of Human Resources
El Paso Community College
P.O. Box 20500
El Paso, Texas 79998

OR97-0643

Dear Ms. Nelson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 105374.

El Paso Community College (the "college") received a request for fifteen categories of documents relating to the requestor's client, apparently a teacher at the college. You claim that some of the requested information is excepted from disclosure under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA").¹ You have submitted a sample of the requested information that you believe is confidential by law.² We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 552.026 of the Government Code incorporates the requirements of the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, into the Open Records Act. Open Records Decision No. 431 (1985). 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

¹As the college has not submitted documents that are, for example, part of the teacher's personnel file, we assume that the college has released or will release all requested information not pertaining to students to the requestor.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

of permitting the release of education records (or personally identifiable information contained therein . . .) 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 that

- (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); *see* Open Records Decision Nos. 462 (1987) at 14-15, 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982), 206 (1978). Release of a student's handwritten comments, even if unsigned, is prohibited under FERPA because it would make the student's identity easily traceable. Open Records Decision No. 224 (1979). As the submitted documents were all hand-written by students, the college must withhold these documents.³

Although the requestor represents a teacher in a grievance proceeding, we do not believe that she has a special right of access to these education records. Federal regulations governing the release of education records provide:

(a) An educational agency or institution *may* disclose personally identifiable information from an education record of a student without the consent [of the student or the student's parent] if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including *teachers*, within the agency or institution *whom the agency or institution has determined to have legitimate educational interests*.

.....

(b) This section does not forbid an educational agency or institution to disclose, nor does it require an educational agency or

³We note that Open Records Decision No. 634 (1995) provides that: (1) the plain language of section 552.301(a) excludes the FERPA provision from the requirement that a governmental body request an attorney general decision, (2) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by section 552.101 as "information considered to be confidential by law," without the necessity of requesting an attorney general decision as to that exception, and (3) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

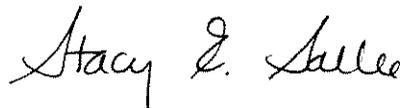
institution to disclose, personally identifiable information from the education records of a student to any parties under paragraph[] (a)(1) . . . of this section.

34 C.F.R. § 99.31 (emphasis added).

Thus, it is for the college to decide whether the requestor representing a teacher has a “legitimate educational interest” in access to the student records at issue. Moreover, the above-quoted language indicates that the college is permitted but not required to disclose the student records to a requesting teacher who is seeking the records for a “legitimate educational interest.” If the college has previously established a policy or promulgated a regulation on this matter, its action in this case must be consistent with the policy or regulation.⁴ If you wish additional guidance on the application of FERPA, you should contact the Family Policy and Regulations Office directly.

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 on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ glg

Ref.: ID# 105374

Enclosures: Submitted documents

cc: Ms. Viviana S. Patiño
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1500 N. Stanton
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(w/o enclosures)

⁴You state that, at the time the college received the request for information, none of the students or their parents, as applicable, had given written consent to the release of the education records. See 20 U.S.C. § 1232g(b)(1), (d).

