



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 5, 1997

Richard Rafes, J.D., Ph.D
Vice President for Legal Affairs
and General Counsel
University of North Texas
P.O. Box 13426
Denton, Texas 78711-2548

OR97-1304

Dear Mr. Rafes:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 106241.

The University of North Texas (the "university") received a request for letters from the father of a university student to the school concerning certain phone messages the father received, the father's tape recordings of the calls, the transcript of the calls, and letters from a former university employee to the school concerning such calls. First, you contend that the requested records constitute "education records" that are protected from disclosure by the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g. Second, you assert that the information is protected by common-law privacy under section 552.101. We have considered the exceptions you claim and reviewed the information at issue.

Government Code section 552.114 exempts from disclosure student records at an educational institution funded completely or in part by state revenue. 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.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the

student's parent. *See* 20 U.S.C. § 1232g(b)(1). FERPA specifically gives a parent the right to inspect the education records of his/her child. If a student has reached age eighteen or is attending an institution of post-secondary education, the rights established by FERPA attach to the student rather than to the student's parents. "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.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) 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.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). We agree that, except for the resignation letter, dated January 30, 1997, the requested records constitute "education records" as defined by FERPA, and that the records in their entirety must be withheld pursuant to section 552.026. The resignation letter is not an "education record" for purposes of FERPA because it does not contain information directly related to a student. Thus, we will address your assertion that the resignation letter is excepted from disclosure under the common-law right to privacy as incorporated by section 552.101.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101). We conclude that the resignation letter does not contain highly intimate or embarrassing facts. Therefore, the letter is not excepted by common-law privacy under section 552.101 and must be released.

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,



Yen-Ha Le
Assistant Attorney General
Open Records Division

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Ref.: ID# 106241

Enclosures: Submitted documents

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