



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 23, 1998

Mr. Rex L. Cottle
President
Lamar University
P.O. Box 10001
Beaumont, Texas 77710

OR98-0230

Dear Mr. Cottle:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 111873.

Lamar University (the "university") received requests for information concerning a student who attended the university's residential program for gifted and talented high school juniors and seniors. The requestor seeks all grievances filed by the student, all correspondence between the university and the student or his family, and also information about a meeting on October 13, 1997. The requestor has asked for all responsive records, including audiotape cassettes. You state that the university did not keep records concerning the October 13, 1997 meeting.¹ The responsive records were submitted to this office for review. You assert that these are education records made confidential under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.

We note initially that the university may withhold from disclosure information that is protected by FERPA without the necessity of requesting a decision from this office. Open Records Decision No. 634 (1995). However, as you have sought a decision from this office, we will address your argument against disclosure. Section 552.026 of the Government Code exempts from disclosure educational records unless released in conformity with 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.

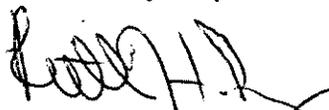
¹We note that the university has an obligation to make a good faith effort to locate requested records, Open Records Decision No. 561 (1990) at 8, but is not required to create information in response to a request for records. Open Records Decision No. 452 (1986) at 3 (open records request applies to information in existence when request is received); 362 (1983) at 2 (governmental body does not have to supply information which does not exist).

§ 1232g(b)(1). 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). FERPA provides that 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). However, records that are maintained by a university's law enforcement unit and that were created by the law enforcement unit for purposes of law enforcement are not protected education records, 20 U.S.C. § 1232g(a)(4)(B)(ii), and thus do not require student consent to release.

Only information which would serve to identify the student is excepted from disclosure under FERPA. Open Records Decision No 332 (1982) at 3. In this situation, because the requestor has asked specifically for records that pertain only to this student, the responsive records generally serve to identify the student. Without a valid consent to release these records, the education records at issue are confidential and may not be disclosed. However, you also submitted a university police offense report that is not protected under FERPA. We have marked the offense report, which must be disclosed.

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# 111873

Enclosures: Submitted documents
Open Records Decision No. 634 (1995)

cc: Mr. Jerry Jordan
The Examiner
470 Orleans, Suite 1006
Beaumont, Texas 77701
(enclosure: Open Records Decision No. 634 (1995))