



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 27, 1998

Mr. Robert A. Schulman
Schulman, Walheim & Heidelberg, Inc.
112 East Pecan, Suite 3000
San Antonio, Texas 78205-1528

OR98-1309

Dear Mr. Schulman:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 115387.

The United Independent School District (the "district"), which you represent, received a request for the names, addresses, and telephone numbers of both dropouts and graduates. You assert that the records at issue are protected from disclosure pursuant to section 552.101 of the Government Code in conjunction with federal law. You also assert that this information is excepted from disclosure pursuant to sections 552.114 and 552.026 of the Government Code. Section 552.101 provides that information is protected from public disclosure if it is confidential by law.

We note initially that in Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from public disclosure student records that are protected by the Family Educational Rights and Privacy Act ("FERPA"), title 20 of the United States Code, section 1232g 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.¹ However, as you seek a decision from this office,

¹Section 552.114 requires that "information in an 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 records." See generally Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982).

we will address your arguments against disclosure of the requested information. We first review the provisions concerning student records and their release.

Under section 552.114(a), you must withhold “information in a student record at an educational institution funded wholly or partly by state revenue.” Section 552.026 also excepts education records from disclosure, unless released in conformity with the Family Educational Rights Act of 1974 (“FERPA”), title 20 of the United States Code, section 1232g. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases identifying information in a minor student’s records without parental consent. 20 U.S.C. § 1232g(b)(1).

However, FERPA does not prohibit the release of directory information relating to students. 20 U.S.C. § 1232g(a)(6)(1). Section 1232g(a)(5)(A) provides that directory information includes “ the student’s name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.” Section 99.3 of title 34 of the Code of Federal Regulations explains that directory information “means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if released.”

FERPA provides a procedure for educational agencies and institutions to follow before directory information can be released to the public. 20 U.S.C. § 1232(g)(a)(5)(B). This procedure allows parents to opt to keep directory information confidential. Section 1232(g)(a)(5)(B) provides:

Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent’s prior consent.

You indicate that the district has complied with the section 1232(g)(a)(5)(B) procedure for public notice concerning what information the district considers to be directory information. You explain that the district’s definition of directory information does not include the type of degrees obtained by students.

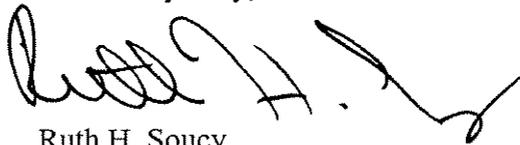
Section 99.3 of title 34 of the Code of Federal Regulations explains that directory information “includes but is not limited to” the section 1232g(a)(5)(A) list of types of information. Thus, while FERPA provides that while directory information must include, at a minimum, student names, addresses, degrees awarded, and the other information listed in section 1232g(a)(5)(A), an educational agency or institution could also opt to make public other types of information than what is contained in this list. However, it does not appear that FERPA allows educational agencies or institutions to restrict directory information to fewer types of information than specifically listed in section 1232g(a)(5)(A).

We agree that FERPA protects information that would identify students who have dropped out of school, rather than graduating. This type of information is not directory information.² 34 C.F.R. § 99.3. Thus, without valid parental or student consent as provided by FERPA, the district may not release the names, addresses, or telephone numbers of students who have dropped out of school, since releasing any of this information would identify those students who have dropped out. However, the district must release the names, addresses, and telephone listings of graduates, as this information is not protected under FERPA.³ 20 U.S.C. § 1232g(a)(5)(A).

You state that the information requested is contained in documents that contain various other types of information about students. You ask if the district may redact non-responsive information from these documents and release to the requestor the specific types of information requested. We note that the district is required to provide only information within the scope of the request that we have determined is public. Thus, the district may redact from the documents at issue information other than the names, addresses, and telephone listings of graduates, which 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 upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 115387

cc: Mr. Daniel Hernandez
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(w/o enclosures)

²Directory information includes the most recent educational agency or institution attended by a student. However, the request in this situation does not seek the most recent school attended by a particular student, but rather, information that specifically identifies students as dropouts.

³We note that information may not be released without consent if parents of minor students or adult students, pursuant to section 1232(g)(a)(5)(B), have notified the district that this information should not be released without prior consent.