



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1998

Mr. John R. Speed
Executive Director
Texas Board of Professional Engineers
P.O. Drawer 18329
Austin, Texas

OR98-2504

Dear Mr. Speed:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119110.

You ask whether the Texas Board of Professional Engineers (the "board") may release, in response to an open records request, college transcripts from the file of an applicant or licensee. You indicate that the transcripts in question were voluntarily furnished to the board by applicants for licensure. In our opinion, the board may not withhold such transcripts in response to a proper request for information. *See* Government Code § 552.221 et seq, § 552.301; Open Records Decision No. 497 (1988).

The Open Records Act, Government Code Chapter 552, contains two specific exceptions for student records, sections 552.026 and 552.114. Section 552.026 provides: "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"), 20 U.S.C. § 1232g, provides in part as follows:

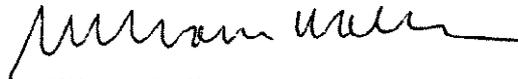
(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping.

You advise that the subject of the records you seek to withhold, Mr. Scott, was a city police officer who was terminated on April 28, 1998. You provided a copy of an August 24, 1998, petition in which Mr. Scott has filed suit against the city for unlawful retaliation under Government Code sections 554.001 et seq., the "Whistleblower Act." You assert that the records at issue here "will certainly be relevant in the lawsuit and will likely be used as evidence."

Based on your representations, we conclude that you may generally withhold the requested records pertaining to Mr. Scott at this time under section 552.103. Please note, however, that, absent special circumstances, once information has been obtained by all parties to litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent Mr. Scott has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a), except for information which is confidential by law.² Similarly, section 552.103(a) does not authorize withholding materials which have already been made available to the public. Open Records Decision No. 436 at 7 (1986).

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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 119181

Enclosures: Submitted documents

²Please note that in disclosing records already made available to Mr. Scott, or in releasing records once litigation is concluded or no longer anticipated, confidential information must be withheld. *See. e.g.* Government Code §§ 552.117 (peace officer address, telephone, social security, and family information), 552.352 (criminal penalties for distribution of confidential information).

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 kinds of 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,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 119110