



September 29, 1999

Ms. S. Michelle Allen
Associate General Counsel
University of North Texas
P. O. Box 310907
Denton, Texas 76203-0907

OR99-2753

Dear Ms. Allen

You have asked whether certain information is subject to required public disclosure under the Texas Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 127004.

The University of North Texas (the "University") received, from the parent of a student, a request for "all reports and statements in [his son's] file," concerning a disciplinary matter. In response to the request, you submit to this office for review the information which you assert is responsive. You state that a portion of the requested information has been released to the requestor after redactions were made, since the information is confidential as student records. You contend that the redacted student identifying information, submitted within Attachment L, is excepted from required public disclosure by section 552.101 of the Government Code, in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"). You also contend that the submitted information, within Attachment N, is excepted from required public disclosure by sections 552.107 and 552.111 of the Government Code. We have considered the exceptions and arguments you raise, and have reviewed the information submitted.

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 of the Government Code 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

¹The University is not required to submit copies of education records to this office. *See* Open Records Decision No. 634 at 10 (1995).

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). "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).

Section 552.114 excepts 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.

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). You have submitted responsive documents with the names of students redacted, except those of the requestor and his son. We note that a parent or adult student has an affirmative right of access to that student's education records. 20 U.S.C. § 1232g(a)(1)(A), (d); *see* Open Records Decision No. 431 (1985) (Public Information Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student). To the extent a requestor is seeking his own child's education records, the University must release this information to the parent. As for other students' identifying information, the University must withhold the redacted information from the requestor, unless the University receives permission to release the information from the respective parent of the students or from the students themselves, if qualified to do so as specified above.

Accordingly, we agree that you must withhold the redacted information as information that may reveal or tend to reveal information about a student that must be withheld pursuant to FERPA. If you have further questions as to the applicability of FERPA to information that is the subject of an open records request, you may consult with the United States Department of Education's Family Policy Compliance Office.² *See* Open Records Decision No. 634 (1995) at 4, n.6, 8. Since you have not raised an applicable exception for the remaining information within Attachment L, we assume that the information will be released to the requestor.

²The Family Compliance Office of the Department of Education may be contacted by mail at 400 Maryland Ave. S.W., Washington, D.C. 20202-4605 or by telephone at (202)260-3887.

Section 552.107(1) protects from disclosure information that reveals client confidences to an attorney or that reveals the attorney's legal advice, opinion, and recommendation. *See* Open Records Decision No. 574 (1990). We note that section 552.107 does not provide a blanket exception for all communications between clients and attorneys or all documents created by an attorney. Where an attorney represents a governmental entity, the attorney-client privilege protects an attorney's legal advice and confidential attorney-client communications. *Id.* However, section 552.107(1) does not protect purely factual information. *Id.* We have marked the information, or portions thereof, that the University may withhold from the public pursuant to section 552.107(1). The remaining information is not excepted from public disclosure by either section 552.107 and must be released.³

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.

Sincerely,

A handwritten signature in black ink that reads "Sam Haddad". The signature is written in a cursive, flowing style with a large initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref: ID# 127004

Encl. Submitted documents

³As we resolve release of information within Attachment N under section 552.107, we need not address your other claimed exception at this time.