



May 16, 2000

Ms. R. Yvette Clark  
General Counsel  
Stephen F. Austin State University  
P.O. Box 13065, SFA Station  
Nacogdoches, Texas 75962-3065

OR2000-1932

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135228.

Stephen F. Austin State University ("SFASU") received a request from a student for that student's records. You assert that you have released most of the responsive information but that you seek to withhold letters of recommendation to which this student has waived his right of access under the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. 1232g. You claim that this information is "exempt from disclosure pursuant to sections 552.026 and 552.114 of the Texas Government Code." We have considered the provisions of the Government Code that you claim and reviewed the submitted information.

Government Code section 552.026 provides

[t]his 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.

Section 552.114 exempts from disclosure student records at an educational institution funded completely or in part by state revenue. This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990). Thus, FERPA,

section 552.026 and section 552.114 are coextensive. *See also* Open Records Decision No. 634 (1995).

Generally, FERPA requires that a student's records must be made available to the student or the student's parents. 20 U.S.C. § 1232g(a)(1)(A), (B). However, if a student in a postsecondary educational institution has signed a waiver of that student's right of access, and the educational institution has satisfied the conditions required to make that waiver effective, confidential recommendations respecting (1) admission to any educational agency or institution, (2) application for employment, or (3) the receipt of an honor or honorary recognition, may be withheld from the student. 20 U.S.C. § 1232g(a)(1)(C)(iii).

The educational institution must comply with the following FERPA provision in order for the above described waiver of a student to be effective

[a] student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (C), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

20 U.S.C. § 1232g(a)(1)(D).

You relate that the subject recommendations were obtained "only for job placement references." You apparently contend that these recommendations are in respect to an "application for employment," as contemplated by 20 U.S.C. § 1232g(a)(1)(C)(iii). You have supplied a copy of an applicable waiver signed by the requestor. Assuming that SFASU has complied with the provisions of 20 U.S.C. § 1232g(a)(1)(D), we are of the opinion that the requested recommendations are not subject to disclosure to this student under FERPA. Therefore, pursuant to Government Code sections 552.026 and 552.114, this information may be withheld from this requestor. If you have further questions as to the applicability of FERPA to information that is the subject of this information request you may consult with the United States Department of Education's Family Policy Compliance Office. *See* Open Records Decision No. 634 (1995).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

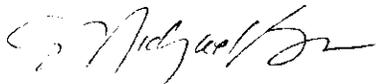
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 135228

Encl Submitted documents

cc: Mr. David Whitehead  
1757 El Mar Lane  
Seabrook, Texas 77586  
(w/o enclosures)