



August 29, 2000

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

OR2000-3342

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#138448.

The Stephen F. Austin State University (the “university”) received a request for statistics regarding grade distributions and course evaluation information “for all courses, going back as far back as electronic records allow.” The requestor has specifically asked that the grade distribution information be provided in a specific electronic format which would provide, among other things, the statistical breakdown of grades received in each course. As for the evaluation information, the requestor seeks “the answers to common questions asked on the evaluations filled out by the students.” You claim that the requested information is excepted from disclosure under section 552.101 in conjunction with the Family Educational Rights and Privacy Act of 1974 (“FERPA”). We have considered the exception you claim and reviewed the submitted representative sample of information at issue.<sup>1</sup>

The Family Educational Rights and Privacy Act of 1974 (“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

---

<sup>1</sup>We assume that the “representative sample” of records submitted to this office is truly representative of all of the information at issue. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than those submitted to this office.

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.

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<sup>2</sup> 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.

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). Additionally, FERPA provides that, "directory information" may be released to the public if the institution or agency complies with section 1232g(a)(5)(B) of title 20 of the United States Code. "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. 20 U.S.C. § 1232g(a)(5)(A). Section 1232g(a)(5)(B) provides as follows:

[a]ny 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

---

<sup>2</sup>Section 552.101 excepts from required public disclosure "information that is confidential by law, either constitutional, statutory, or by judicial decision."

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.

20 U.S.C. § 1232g(a)(5)(B). This office has previously held that a class roster is directory information. *See* Open Records Decision No. 244 (1980).

Although you have communicated to the requestor that the university possesses the requested grade distribution information and is able to provide it in the requested electronic format, you have not submitted the information in the requested format for our review. Instead, you have submitted information from which the requested format would be derived, such as actual student transcripts, a class roster, and a grade distribution of a specific department for one term. While the submitted information may contain student records under FERPA, this information is not responsive to the request. We believe that the requested grade distribution information in the requested format would not identify individual students and therefore would not trigger FERPA.<sup>3</sup> Therefore, because FERPA does not prohibit the release of the requested information in the requested format, and because you have raised no other exception to required public disclosure, the university must release the requested grade distribution in the requested, non-identifying format.

As for the submitted student evaluations, we agree that the students' handwriting tends to identify the students and the evaluations in the submitted form are therefore confidential under FERPA. Therefore, the university may not release the student evaluations in the format submitted to this office.<sup>4</sup>

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

---

<sup>3</sup>On the submitted grade distribution for the Biology Department for a 1997 term, you indicate that students may be identified by single grade statistics. For example, a statistic showing that only one student received a grade of C in a specific course might tend to identify that student. We disagree that such a single statistic would identify the student because it would be impossible to tell which of the students in the class was the one to receive the C. However, we believe that such a statistic would tend to identify the student in a course of study where there was only one student.

<sup>4</sup>It is not apparent whether the university can convert the submitted evaluation information into an alternative format which would no longer identify students but would be acceptable to the requestor.

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,



E. Joanna Fitzgerald  
Assistant Attorney General  
Open Records Division

EJF/er

Ref: ID# 138448

Encl: Submitted documents

cc: Ms. Karen Holst  
c/o Ms. R. Yvette Clark  
General Counsel  
Stephen F. Austin State University  
P.O. Box 13065  
SFA Station  
Nacogdoches, Texas 75962-3065  
(w/o enclosures)