



October 26, 2000

Mr. J. Robert Giddings  
University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2981

Dear Mr. Giddings:

Enclosed you will find the documents related to ID# 140544 (OR2000-4153). We regret that we failed to mail this to the requestor's correct address. We apologize for any inconvenience this oversight may have caused.

Sincerely,

Precilla Rodriguez  
Secretary to:  
Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

Ref: ID# 140544

cc: Ms. Sara Allen  
It's All Greek to Me!  
3910 Pete's Path  
Austin, Tx 78731  
(w/enclosure)



October 25, 2000

Mr. J. Robert Giddings  
University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2981

OR2000-4153

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 140544.

The University of Texas System (the “university”) received requests for “a copy of the University of Texas at Austin Rush 2000 information list.” More specifically, the requestor asks for the names, permanent addresses, school addresses, and home telephone numbers of all “registered Rushees.” You claim that the requested information is excepted from disclosure under Government Code sections 552.026, 552.101, and 552.114, and pursuant to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232(g). You have submitted the responsive information for our review. We have considered the exceptions you claim and reviewed the submitted information.

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 of the Government Code 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.

Section 552.114(a) of the Government Code requires that the university withhold “information in a student record at an educational institution funded wholly or partly by state revenue.” Further, section 552.026 provides that “chapter [552] does not require the release

of information contained in education records of an educational agency or institution, except in conformity with [FERPA].” This office generally applies the same analysis under section 552.114 and FERPA.

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). When a student has attained the age of eighteen years or is attending an institution of postsecondary education, the student holds the rights accorded by Congress to authorize the inspection of these records. 20 U.S.C. § 1232g(d). “Education records” are 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. *See* 20 U.S.C. § 1232g(a)(4)(A). 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). Unless the information personally identifies particular students, it is not protected from disclosure under FERPA.

FERPA defines “directory information” as follows:

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) (emphasis added). You explain that it is the position of the university that sorority rush activities are not “officially recognized” activities. Therefore, you contend that the list of students participating in rush is not directory information. We infer from this statement that the university has not designated the requested information as directory information in compliance with section 1232g(a)(5)(B). Section 1232g(a)(5)(B) provides as follows:

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.

Absent such a designation by the university, we conclude that the university must withhold the requested information pursuant to section 552.026 of the Government Code unless the university receives permission to release the information from the parent of the respective student or from the student herself, if qualified to do so as specified above.

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).

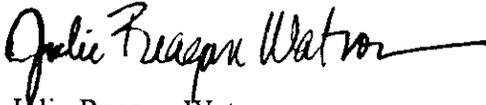
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

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,



Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/pr

Ref: ID#140544

Encl. Submitted documents

cc: Ms. Sara Allen  
It's All Greek to Me!  
3910 Pete's Path  
Austin, Texas 78731  
(w/o enclosures)