



January 29, 2001

Dr. Bobby K. Marks  
President  
Sam Houston State University  
P.O. Box 2026  
Huntsville, Texas 77341

OR2001-0334

Dear Dr. Marks:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 143098.

Sam Houston State University (the "university") received a request for information concerning an investigation of the Sigma Theta Chapter of the Chi Omega sorority. You claim that portions of the requested information are excepted from disclosure under sections 552.103, 552.108, 552.111, and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request a copy of the written request for information. Gov't Code § 552.301(e). A governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

In this instance, you did not submit to this office a copy of the written request for information. While ordinarily such failure to comply with section 552.301 results in the release of requested information under section 552.302, we find that some of the submitted information is confidential under another source of law, and, therefore, a compelling reason exists to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). However, your claimed exceptions under sections 552.103, 552.108, and 552.111 are waived because they do not protect from disclosure information that is confidential by another source of law and, in this instance, they do not concern third party interests. We only consider your claimed exception under section 552.114 because it protects information that is made confidential by another source of law.

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,<sup>1</sup> 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 parents or the student.<sup>2</sup> 20 U.S.C. §§ 1232g(b), (d). “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).

Section 552.114 of the Act excepts 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. 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.<sup>3</sup>

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<sup>1</sup>Personally identifiable information includes, but is not limited to: (a) the student’s name; (b) the name of the student’s parent or other family member; (c) the address of the student or student’s family; (d) a personal identifier, such as the student’s social security number or student number; (e) a list of personal characteristics that would make the student’s identity easily traceable; or (f) other information that would make the student’s identity easily traceable. 34 C.F.R. §99.3 (2000).

<sup>2</sup>Whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the permission or consent required of and the rights accorded to the parents of the student are only required of or accorded to the student. 20 U.S.C. §§ 1232g(d).

<sup>3</sup>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 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

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). In some instances, the content of the documents as a whole makes the identities of the students named in the documents easily traceable, regardless of whether their names are redacted. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information” to include “information that would make the student’s identity easily traceable”).

Here, we find that most of the records you wish to withhold relate to the university’s investigation of an alleged hazing incident involving the Sigma Theta Chapter of the Chi Omega sorority. Because these records are maintained by the university and contain information directly related to students, we conclude that they are “education records” for the purposes of FERPA. *See* 20 U.S.C. § 1232g(a)(4)(A). Consequently, you must withhold information from the documents in the investigative file to the extent “reasonable and necessary to avoid personally identifying a particular student.” Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978). You must withhold all student identifying information from those records, including the names, addresses and phone numbers, family member information, student identification numbers, and handwritten notes of other students. *See* 34 C.F.R. § 99.3 (defining personally identifiable information); Open Records Decision No. 224 (1979). Unless otherwise authorized by the students themselves, this information is confidential under FERPA. *See* 20 U.S.C. § 1232g(b)(1); Gov’t Code §§ 552.026, .101, .114. For your convenience, we have marked a representative sample of the types of student identifying information that you must withhold that appear in the investigative files. You must release the remaining information that does not tend to identify particular students, subject to the following exceptions.

We note that a student at a postsecondary institution has a right to inspect his or her own education records. 20 U.S.C. § 1232g(a)(1)(A); *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). Because you have not provided this office with a copy of the written request for information, we are unable to determine whether the requestor is acting on behalf of one of the students to whom the records pertain. If the requestor is making the request for student records as an agent of one of the students to whom the records pertain, then you must release information identifying that particular student to the requestor. However, you must still withhold information that identifies or tends to identify any other students. Because we do not know whether the requestor is acting on behalf of one of the students, we are also not able to determine whether any of the information pertaining to other students makes their identities easily traceable. To the extent that any of the information makes the identities of particular students easily traceable to the

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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.

requestor, that information is also confidential under FERPA. *See* 34 C.F.R. § 99.3 (defining “personally identifiable information” to include “information that would make the student’s identity easily traceable”).

The submitted records include a “Patrol Assignment Report,” a “Department of Residence Life Incident Report,” and Huntsville Police Department report which contains witness statements and submissions. Some of these records appear to be law enforcement records of the Sam Houston State University Police Department (the “university police department”). The term “education records” does not include “records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement.” *Id.* § 1232g(a)(4)(B)(ii). The federal regulations interpreting FERPA define law enforcement records as follows:

(1) Records of a law enforcement unit means those records, files, documents, and other materials that are -

- (i) Created by a law enforcement unit;
- (ii) Created for a law enforcement purpose; and
- (iii) Maintained by the law enforcement unit.

(2) Records of a law enforcement unit does not mean –

- (i) Records created by a law enforcement unit for a law enforcement purpose that are maintained by a component of the educational agency or institution other than the law enforcement unit; or
- (ii) Records created and maintained by a law enforcement unit exclusively for a non-law enforcement purpose, such as a disciplinary action or proceeding conducted by the educational agency or institution.

34 C.F.R. § 99.8(b) (2000). Records of the law enforcement unit of an educational institution are not subject to the confidentiality provisions of FERPA and generally must be released. *See* Open Records Decision No. 342 (1982). Therefore, if the records in question are records of the university police department and are not maintained by a component of the university other than the university police department, then the records are not subject to FERPA and you must release those records in their entirety, subject to the exceptions explained below. On the other hand, if the records in question are not maintained solely by the university police department, then under FERPA you must withhold all information that identifies or tends to identify particular students from those records before releasing them to the requestor.

To the extent that the submitted investigation records are maintained solely by the university police department and therefore not subject to FERPA, we find that portions of those records are protected from disclosure under the common law right of privacy. Section 552.101 of the Act excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses common law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information is excepted from required public disclosure by a common law right of privacy if the information (1) contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found.*, 540 S.W.2d 668. Information which either identifies or tends to identify a victim of sexual assault or other sex-related offenses may be withheld under common law privacy. Open Records Decision Nos. 393 (1983). In this case, the report of the Huntsville Police Department, and the attachments following the report, contain information that identifies or tends to identify an alleged victim of a sexual assault. We have marked all of the identifying information within those documents that you must withhold under common law privacy in conjunction with section 552.101 of the Government Code, assuming that this type of information is not already confidential under FERPA as student identifying information.

Finally, we note that social security numbers appear in some of the records that are possibly maintained solely by the university police department. To the extent that those social security numbers are not confidential student identifying information under FERPA, they may still be confidential under another federal statute. A social security number is excepted from required public disclosure under section 552.101 of the Act in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that any of the social security numbers in the records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the university police department pursuant to any provision of law, enacted on or after October 1, 1990.

To summarize, you must withhold all student identifying information from the submitted records that are subject to FERPA, as discussed above. If the report of the Huntsville Police Department is not subject to FERPA, you must withhold information that identifies the sexual assault victim from that report under section 552.101 in conjunction with common law privacy. In addition, any social security numbers that are not subject to FERPA may be confidential under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act.

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).

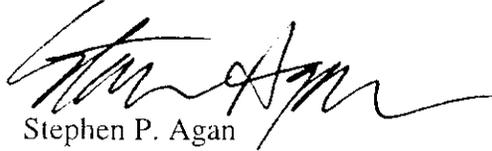
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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 Hadassah Schloss at 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,

A handwritten signature in black ink, appearing to read "Stephen P. Agan", written in a cursive style.

Stephen P. Agan  
Assistant Attorney General  
Open Records Division

SPA/seg

Ref: ID# 143098

Encl. Submitted documents

cc: Mr. Hal Ridley  
c/o Dr. Bobby K. Marks  
President  
Sam Houston State University  
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(w/o enclosures)