



April 30, 2001

Mr. Robert L. Kane  
Attorney  
The University of Texas System  
201 West 7<sup>th</sup> Street  
Austin, Texas 78701-2902

OR2001-1754

Dear Mr. Kane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146546.

The University of Texas at San Antonio (the "university") received a written request from a university professor for, among other things, records pertaining to student complaints against the requestor.<sup>1</sup> You contend that the documents you submitted to this office under Tabs 3 through 8 are excepted from disclosure under section 552.101 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.

Section 552.026 of the Government Code 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 [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

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<sup>1</sup>We assume the university has made available to the requestor the remaining requested documents. If it has not, it must do so at this time. See Gov't Code § 552.302.

enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student. *See* 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. *Id.* § 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." Open Records Decision Nos. 332 (1982), 206 (1978).

After reviewing the information at issue, we conclude that all of the documents you submitted to our office under Tabs 3 through 8 constitute "education records" for purposes of FERPA in that all of these documents contain information about identifiable students. We note that although FERPA specifically provides for the release of "education records" to "school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests," 20 U.S.C. § 1232g(b)(1)(A), the federal regulation governing such release of education records provides as follows:

(a) An educational agency or institution *may* disclose personally identifiable information from an education record of a student without the consent [of the student or the student's parent] if the disclosure meets one or more of the following conditions:

(1) The disclosure is to other school officials, including *teachers*, within the agency or institution *whom the agency or institution has determined to have legitimate educational interests*.

....

(b) Paragraph (a) does not forbid an educational agency or institution from disclosing, nor does it require an educational agency or institution to disclose, personally identifiable information from the education records of a student to any parties under paragraph[] (a)(1) . . . of this section.

34 C.F.R. § 99.31 (emphasis added). Thus, it is for the university to decide whether the requestor in this instance has a "legitimate educational interest" in the education records at issue.<sup>2</sup> You inform us that in this instance, the university has determined that the release of the information at issue to the requestor would not serve a legitimate educational interest. You further inform us that the requestor would be able to identify the student complainants if any part of their grievances were released. Consequently, the university must withhold

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<sup>2</sup>Moreover, the above quoted language indicates that the university is permitted but not required to disclose the education records to a requesting instructor who is seeking the records for a "legitimate educational interest."

these records in their entirety until such time that it receives from the respective students an authorization that comports with the requirements of FERPA. *See id.* § 1232g(b)(2)(A) (requiring specification of records to be released and the reasons for such release).<sup>3</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 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

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<sup>3</sup>If you have 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, whose address and telephone number follow:

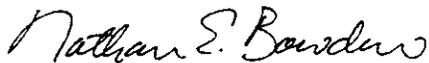
Family Policy Compliance Office  
United States Department of Education  
600 Independence Avenue S.W.  
Washington, D.C. 20202-4605  
(202) 260-3887

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,



Nathan E. Bowden  
Assistant Attorney General  
Open Records Division

NEB/RWP/seg

Ref: ID# 146546

Encl. Submitted documents

cc: Dr. Paula M. Kautt  
119310 Barkston Drive  
San Antonio, Texas 78253  
(w/o enclosures)