



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

October 9, 2003

Mr. Renaldo L. Stowers  
Associate General Counsel  
University of North Texas  
P.O. Box 310907  
Denton, Texas 76203-0907

OR2003-7180

Dear Mr. Stowers:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 191231.

The University of North Texas (the "university") received a request for the requestor's records. You claim that certain portions of the requested information, representative samples of which you have submitted to this office, are excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"). *See* 20 U.S.C. § 1232g(b)(1). "Education records" under FERPA 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. *See id.* § 1232g(a)(4)(A). The submitted information consists entirely of records maintained by the university that directly relate to the requestor, a student of the university. Accordingly, the submitted information constitutes education records of the requestor for purposes of FERPA. *See, e.g., Belanger v. Nashua, New Hampshire Sch. Dist.*, 856 F. Supp. 40, 48-50 (D.N.H. 1994) (broadly construing FERPA definition of "education records"). FERPA states that whenever a student "has attained eighteen years of age, or is attending an institution of postsecondary education," the right of access "shall thereafter only be . . . accorded to the student." 20 U.S.C. § 1232g(d). In this case, the requestor thus has an affirmative right of access to the requested information under FERPA. However, since you claim that the submitted information is excepted from disclosure, we must address your argument.

You claim that the submitted information is excepted from disclosure in its entirety pursuant to section 552.103 of the Government Code. We note that section 552.103 is a state statute that is preempted by federal law to the extent it conflicts with that federal law. *See, e.g., Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995); *see also* Open Records Decision No. 431 (1985) (FERPA prevails when in conflict with state law). Because FERPA as federal law provides the requestor with an affirmative right of access to the submitted information, we conclude that the university may not withhold any portion of the submitted information under section 552.103 of the Government Code. As you claim no other exceptions, the information in question must be released to the requestor.

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 Dep't of Pub. 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 Texas Building and Procurement 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. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. 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 "Amy Peterson", with a long horizontal flourish extending to the right.

Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 191231

Enc. Submitted documents

c: Ms. Lee Ann Torrans  
5165 Forest Lane Place  
Dallas, Texas 75244  
(w/o enclosures)