



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2004

Dr. Ronnie Glasscock
President
North Central Texas College
1525 West California Street
Gainesville, Texas 76240-4699

OR2004-2866

Dear Dr. Glasscock:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198939.

North Central Texas College (the "college") received a request for (1) a memorandum relating to an investigation; (2) a letter relating to the renewal of a named individual's employment contract; and (3) transcripts of discussions regarding the performance of two named individuals as instructors. You inform us that the college will release the requested letter. You also state that the college has sent the requestor a letter seeking clarification of the request for transcripts.¹ You do not indicate that the requestor has responded to the request for clarification. Accordingly, the college has no further obligation to respond to the request for transcripts at this time.² However, should the college receive clarification and seek to withhold any of the information to which the requestor seeks access, the college must comply with section 552.301 of the Government Code in doing so. *See Gov't Code §§ 552.301, .302.* You claim that the requested memorandum is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

¹See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²See Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body's communications with requestor to clarify or narrow request will toll ten-business-day deadline to request decision under section 552.301(b)).

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses information that another statute makes confidential. The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g ("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); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information).

FERPA is incorporated into chapter 552 of the Government Code by section 552.026, which 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.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that 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).

Section 552.114 excepts from disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." Gov't Code § 552.114(a). This office generally has treated "student record" information under section 552.114(a) as the equivalent of "education record" information that is protected by FERPA. *See* Open Records Decision No. 634 at 5 (1995).³

We agree that the submitted memorandum constitutes an education record that is subject to FERPA. Generally, FERPA requires that information be withheld from the public only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 at 3 (1982), 206 at 2 (1978). You indicate that the underlined names in the memorandum are those of students. We have marked additional information in the memorandum that tends to identify particular students. The college must

³In Open Records Decision No. 634 (1995), this office concluded that: (1) an educational agency or institution may withhold from the public 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) a state-funded educational agency or institution may withhold from the public 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. *See* Open Records Decision No. 634 at 6-8 (1995).

not release either the underlined student names or the information that we have marked unless it has authority under FERPA to do so. The remaining contents of the memorandum must be released.

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).

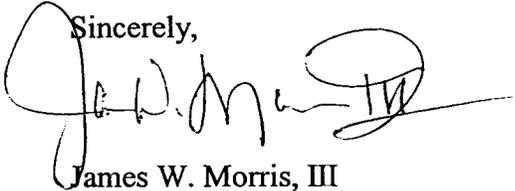
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 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 "James W. Morris, III". The signature is fluid and cursive, with a large initial "J" and a long horizontal stroke at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 198939

Enc: Submitted documents

c: Mr. Andy Hogue
Reporter
Gainesville Daily Register
P.O. Box 309
Gainesville, Texas 76241
(w/o enclosures)