



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 22, 2005

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
200 Technology Way, Suite 2079
College Station, Texas 77845-3424

OR2005-07587

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code, the Public Information Act (the "Act"). Your request was assigned ID# 230733.

Prairie View A&M University (the "university") received a request for six categories of information relating to a named student, a particular accident, and policies or procedures concerning the cheerleading squad. You inform us that the university will release some of the requested information. You claim that the remaining responsive information is excepted from disclosure under sections 552.026, 552.101, 552.114, and 552.137 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the information you submitted.

You inform us that some of the requested information was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2004-6011 (2004). Therefore, assuming that the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, we conclude that the

¹We note you also raise section 552.107, but make no arguments in support of this exception, and therefore it is waived. *See* Gov't Code §§ 552.007, .301(e)(1)(A), .302; Open Records Decision No. 665 at 2 n.5 (2000). Furthermore, you failed to raise section 552.111 within the ten business day period mandated by section 552.301(b), and accordingly have also waived this exception.

university must continue to rely on our decision in Open Records Letter No. 2004-6011 with respect to the information that was previously ruled upon in that decision.²

Section 552.101 excepts from required public disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with the Family Educational Rights and Privacy Act of 1974 (“FERPA”), 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).

Section 552.026 incorporates FERPA into chapter 552 of the Government Code and 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). 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); *see also* 34 C.F.R. § 99.3 (“personally identifiable information” includes, among other things, “[o]ther information that would make the student’s identity easily traceable”).

Section 552.114 excepts from public 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 as the

²The four criteria for this type of “previous determination” are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general’s prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

equivalent of “education records” that are protected by FERPA. *See* Open Records Decision Nos. 634 at 5 (1995).³

You inform us that the submitted documents contain information that identifies students of the university. You also point out that the requestor knows the identity of one of the students to whom the submitted information pertains. In this instance, the university clearly maintains some of the submitted information that directly relates to students. The university must withhold this information, which we have marked, under FERPA. However, we note that the remaining information contains records created by the university’s Department of Public Safety (the “department”), some of which you seek to withhold under FERPA. Records maintained by the department that were created by the department for a law enforcement purpose do not constitute “education records” for purposes of FERPA. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. § 99.8(b)(1) (2003) (defining law enforcement records); Open Records Decision No. 612 (1992) (term “education records” does not include records maintained by law enforcement unit of educational agency or institution created by that law enforcement unit for purpose of law enforcement). However, a record created by a law enforcement unit for a law enforcement purpose that is maintained by a component of the educational agency or institution other than the law enforcement unit is not a record of a law enforcement unit. *See* 34 C.F.R. § 99.8(b)(2) (2003). Therefore, if the department records at issue are maintained by a university component other than the department, then the records fall within the purview of FERPA and must be withheld from the requestor. However, if the department maintains the submitted law enforcement records, then FERPA does not apply to this information and it must be released to the requestor.

You also raise section 552.101 of the Government Code in conjunction with section 101.104 of the Texas Civil Practice and Remedies Code. Section 101.104 provides as follows:

- (a) Neither the existence nor the amount of insurance held by a governmental unit is admissible in the trial of a suit under [the Texas Tort Claims Act].
- (b) Neither the existence nor the amount of the insurance is subject to discovery.

Tex. Civ. Prac. & Rem. Code § 101.104. You assert that some of the submitted information is protected by section 101.104 and thus is excepted from disclosure under section 552.101

³In Open Records Decision No. 634 (1995), this office concluded that: 1) an educational agency or institution may withhold information that is protected by FERPA and excepted from public disclosure under 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 information that is excepted from public disclosure under 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 under section 552.114. *See* Open Records Decision No. 634 at 6-8 (1995).

of the Government Code. Section 101.104 prohibits the discovery and admission of insurance information during a trial under the Texas Tort Claims Act, chapter 101 of the Civil Practice and Remedies Code. *See City of Bedford v. Schattman*, 776 S.W.2d 812, 813-14 (Tex. App.—Fort Worth 1989, orig. proceeding) (protection from producing evidence of insurance coverage under section 101.104 is limited to actions brought under the Tort Claims Act). However, section 101.104 does not make insurance information confidential for purposes of section 552.101 of the Government Code. *See Open Records Decision No. 551 at 3 (1990)* (provisions of section 101.104 “are not relevant to the availability of the information to the public”). The Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings. *See Gov’t Code §§ 552.005 (Act does not affect scope of civil discovery), .006 (Act does not authorize withholding public information or limit availability of public information to public except as expressly provided by the Act); see also Attorney General Opinion JM-1048 (1989); Open Records Decision No. 575 (1990) (overruled in part by Open Records Decision No. 647 (1996)) (section 552.101 does not encompass discovery privileges)*. Thus, we find that section 101.104 of the Civil Practice and Remedies Code does not make any of the submitted information confidential for purposes of section 552.101 of the Government Code. Therefore, you may not withhold any of the information at issue under section 552.101 in conjunction with section 101.104.

Section 552.130 excepts from disclosure certain motor vehicle record information and provides in relevant part:

(a) Information is excepted from [required public disclosure] if the information relates to:

(1) a motor vehicle operator’s or driver’s license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov’t Code § 552.130(a). Therefore, the university must withhold from disclosure the information we have marked under section 552.130.⁴

We note that the submitted information contains account numbers that are subject to section 552.136 of the Government Code. Section 552.136 in relevant part:

(a) In this section, “access device” means a card, plate, code, account number, personal identification number, electronic serial number, mobile

⁴The Office of the Attorney General will raise a mandatory exception like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. The university must withhold the account number information that we have marked in the submitted documents pursuant to section 552.136 of the Government Code.

You note that the submitted information includes e-mail addresses. Section 552.137 of the Government Code excepts from disclosure “an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body” unless the member of the public consents to its release or the e-mail address is of a type specifically excluded by subsection (c). *See* Gov't Code § 552.137(a)-(c). The e-mail addresses at issue do not appear to be of a type specifically excluded by section 552.137(c). You do not inform us that the university has received consent to release this information. Therefore, in accordance with section 552.137, the university must withhold the e-mail addresses you have marked, as well as the additional information we have marked.

Next, we note that the submitted information contains social security numbers. Section 552.147 of the Government Code⁵ provides that “[t]he social security number of a living person is excepted from” required public disclosure under the Act. Therefore, the university must withhold the social security numbers contained in the submitted information under section 552.147.⁶

Finally, we note that the submitted information contains information that is protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672

⁵Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

⁶We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

(1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary, we agree that most of the submitted information consists of education records subject to FERPA. The university must withhold this information, which we have marked, under FERPA. As for the law enforcement records at issue, they are education records under FERPA and must be withheld only if they are held by a component of the university other than the department. If the department maintains the submitted law enforcement records at issue, then they are not education records made confidential by FERPA, and they must be released to the requestor. The university must withhold the marked information under sections 552.130, 552.136, 552.137, and 552.147 of the Government Code, and release the remaining information to the requestor. The information that is protected by copyright may only be released in accordance with federal copyright law.

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).

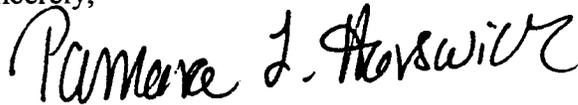
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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); *Tex. 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,



Tamara L. Harswick
Assistant Attorney General
Open Records Division

TLH/sdk

Ref: ID# 230733

Enc. Submitted documents

c: Mr. Steven K. DeWolf
Belluinger & DeWolf, L.L.P.
10000 North Central Expressway, Suite 900
Dallas, Texas 75231
(w/o enclosures)