ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 7, 2005

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

OR2005-11002

Dear Mr. Stowers:

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# 237644.

The University of North Texas (the "university") received a request for various categories of information pertaining to an accusation of academic dishonesty, including copies of examinations. You state that the university is releasing the majority of the requested information. You claim that the requested examinations are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.[1]

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). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes, such as 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 enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See id*; *see*

[1] We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

also 34 C.F.R. § 99.3 (defining personally identifiable information). Under FERPA, "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. *See* 20 U.S.C. § 1232g(a)(4)(A).

The submitted information consists entirely of records maintained by the university that directly relate to students of the university. Accordingly, the submitted information constitutes education records for purposes of FERPA. Under FERPA, a student and student's parents generally have an affirmative right of access to the student's own education records, although this right does not extend to information in the student's record that identifies other students. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; *see also* 34 C.F.R. § 99.12(a)("If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.") Thus, the requestor in this case has the right under FERPA to inspect and review or be informed of information pertaining to the requestor's client, who is a university student, in the submitted education records.

However, some of the requested information identifies students other than the requestor's client. This information must be protected by FERPA. *See* 20 U.S.C. § 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." *See* Open Records Decision Nos. 332 (1982), 206 (1978). In this case, the requestor specifically requested the exam of another named student. Thus, the requestor knows the identity of the student whose information is at issue. Therefore, withholding only portions of this information would not suffice to avoid the release of personally identifiable information as mandated by FERPA. Accordingly, the information pertaining to the exam of the other named student must be withheld in its entirety under FERPA.

We note that the submitted FERPA records accessible by the requestor generally may not be withheld from the requestor pursuant to an exception to disclosure under the Act. *See Equal Employment Opportunity Comm'n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law); *see also* Open Records No. 431 (1985) (when conflict arises between provisions of Act and FERPA, federal statute prevails). Accordingly, we conclude that the university may not withhold any portion of the submitted information under section 552.122 of the Government Code.

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); *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 Office of the Attorney General 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,

Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/segh

Ref: ID# 237644

Enc. Submitted documents

c: Mr. Phillip Mack Furlow
Hayes, Berry, White & McMurry, LLP
P.O. Box 50149
Denton, Texas 76206
(w/o enclosures)