



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 18, 2008

Ms. Renee Byas
General Counsel
Houston Community College
P.O. Box 667517
Houston, Texas 77266-7517

OR2008-12891

Dear Ms. Byas:

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# 322274.

The Houston Community College (the "college") received a request for the number of Thai students currently enrolled at the college. You claim that the requested information is excepted from disclosure under sections 552.026 and 552.114 of the Government Code in conjunction with the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code. We have considered the exceptions you claim and reviewed the submitted information.

The United States Department of Education Family Policy Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.¹ See 20 U.S.C. § 1232g(d); 34 C.F.R. § 99.3 (defining "personally identifiable information"). However, the submitted information is purely statistical, and does not name or otherwise personally identify any particular student. Thus, the submitted information is not an educational record for purposes of FERPA, section 552.026, or section 552.114, and no portion of it may be withheld on that basis. See

¹A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Gov't Code §§ 552.026 (incorporating FERPA into Act), 552.114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining that same analysis applies under Gov't Code § 552.114 and FERPA). As you raise no other exception to disclosure of the submitted information, it 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 file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over 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 challenge 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,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/mcf

Ref: ID# 322274

Enc. Submitted documents

c: Ms. Cristina Alvarez
c/o Ms. Renee Byas
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(w/o enclosures)