



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 4, 1989

Mr. J. Scott Chafin
Office of General Counsel
University of Houston System
4600 Gulf Freeway, Suite 425
Houston, Texas 77023

Dear Mr. Chafin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 4890; this decision is OR89-003.

Under the Open Records Act, all information held by governmental bodies is open unless the information falls within one of the act's specific exceptions to disclosure. The act places on the custodian of records the burden of proving that records are excepted from public disclosure. If a governmental body fails to claim an exception, the exception is ordinarily waived unless the information is deemed confidential under the act. See Attorney General Opinion JM-672 (1987). The act does not require this office to raise and consider exceptions that you have not raised.

You received a request for the University's response to the National Collegiate Athletic Association (NCAA) investigation. In your letter of October 28, 1988, you asserted that the information was subject to disclosure under sections 3(a)(11), 3(a)(14), and 14(e) of the act. In a telephone conversation with this office on December 19, 1988, you withdrew your argument under section 3(a)(11), based in part on the conclusion of the NCAA investigation and public announcement of the NCAA's findings. You withdrew your argument under 3(a)(11) in writing on December 19, 1988, in a letter we designated ID# 5233. This office has concluded that the requested information is partially exempt under sections 3(a)(14) and 14(e).

Section 3(a)(14) protects:

student records at educational institutions funded wholly, or in part, by state revenue; but such records shall be made available upon request of educational institution personnel, the student involved, that student's parent, legal guardian, or spouse or a person conducting a child abuse investigation required by Section 34.05, Family Code.

Section 14(e) of the Open Records Act provides as follows:

Nothing in this Act shall be construed to require the release of information contained in education records of any educational agency or institution except in conformity with the provisions of the Family Educational Rights and Privacy Act of 1974, as enacted by Section 513 of Public Law 93-380, codified as Title 20 U.S.C.A. Section 1232g, as amended.

The Family Educational Rights and Privacy Act of 1974 is informally known by its initials as the FERPA. It is also called "the Buckley Amendment" for the Senator who sponsored its inclusion in a major federal education bill.

The Buckley Amendment provides that no federal funds will be made available under any applicable program to an educational agency or institution that:

1. denies the parents of students the right to inspect and review the education records of their children;
2. does not give parents a right to challenge the content of a student's education records;
3. releases education records (or personally identifiable information contained therein other than directory information) of students without the written consent of the parents to anyone but certain numerated federal, state, and local officials and institutions.

See 20 U.S.C. § 1232g subsections (a)(1)(A), (a)(2), (b)(1). When a student has attained the age of eighteen years or is attending an institution of postsecondary education, he, and not his parents, holds the rights accorded by Congress to inspect his education records, to challenge their content,

and to consent to the release of his records to other persons. 20 U.S.C. § 1232g(d). "Education records" means those records which "(i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). The statute sets out specific exceptions. 20 U.S.C. § 1232g(a)(4)(B). "Directory information" includes, for example, a student's name, address, telephone number, date and place of birth, and major field of study. An educational agency may make directory information public by giving public notice of the categories of information that it has designated as directory information; the parent or student has a reasonable time to inform the institution that the information should not be released without his consent. 20 U.S.C. § 1232g(a)(5)(A), (B).

The Buckley Amendment was intended to protect a student's interest in knowing the content of personal and possibly erroneous information about him, in correcting it, and in controlling its dissemination to others. Section 3(a)(14) of the Open Records Act serves similar purposes.

Section 14(e) of the Open Records Act was adopted to conform state law to the requirements of the FERPA to insure that state educational institutions would qualify for federal funding. Open Records Decision No. 431 (1985); see also Open Records Decision No. 72 (1975) (compliance with the FERPA required even prior to enactment of section 14(e) of article 6252-17a, V.T.C.S.). A student's right to view his education records under the Buckley Amendment is incorporated in section 14(e) of the Open Records Act and prevails over the other exceptions of the Open Records Act. For example, a student at a state university that receives federal funds may view his education records even though they might be records related to litigation within section 3(a)(3) of the Open Records Act. Open Records Decision No. 431.

This office has held that information identifying a particular student is closed to the public by the FERPA. Open Records Decision Nos. 294 (1981); 205 (1978). We have marked the portions of the information submitted for review that reveal a student's identity. The remainder of the information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. Please provide a copy of

J. Scott Chafin
January 4, 1989
Page 4

this letter to the person who requested the information. If you have questions about this ruling, please refer to OR89-003.

Yours very truly,

*Open Government Section
of the Opinion Committee* 

Open Government Section
of the Opinion Committee
Prepared by Patricia Barnhard
Assistant Attorney General

PB/bra

Ref.: ID# 4890
ID# 4891
ID# 5233

Copy to: Mike De La Cruz
Daily Cougar Sports Editor
University of Houston
Houston, Texas 77204-4071

Stanley B. Binion
Baker, Brown, Sharman &
Parker
Citicorp Center
1200 Smith, Suite 3600
Houston, Texas 77002

Enclosures (Univ. of Houston response to NCAA investigation;
3 notebooks)