



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 11, 1989

Ms. Elneita Hutchins-Taylor
Legal Services
Houston Independent School District
3830 Richmond Avenue
Houston, Texas 77027-5838

Dear Ms. Hutchins-Taylor:

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# 7858; this decision is OR89-426.

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. Attorney General Opinion H-436 (1974). 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.

The Houston Independent School District (HISD) received an open records request for the education records of a student from the student's father. You note that the father is incarcerated in the Texas prison system. You indicate that the Harris County Child Protective Services claims to have been appointed managing conservator of the child but has not provided a copy of the court order appointing it. You ask whether the father still has a right of access to his child's education records.

Sections 3(a)(14) and 14(e) of the Open Records Act incorporate the protection and rights provided in the Family Educational Rights and Privacy Act of 1974 (FERPA), 20 U.S.C. § 1232g. Under FERPA, federal funds for HISD may be cut off if HISD denies the parents of students the right to

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inspect their children's education records. 20 U.S.C.
§ 1232g(a)(1)(A).

The fact that parents are not managing conservators does not mean that they lose their special right of access to their children's education records. Open Records Decision No. 42 (1974). Only if parental rights have been terminated by court order will a parent lose his or her right to inspect his or her child's education records. Id.

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. If you have questions about this ruling, please refer to OR89-426.

Yours very truly,

*Open Government Section
of the Opinion Committee*

Open Government Section
of the Opinion Committee
Prepared by Jennifer S. Riggs
Chief, Open Government Section

JSR/le

Ref.: ID# 7858
ID# 7343

cc: Charles A. Michaels
Texas Department of Corrections
Wynne Unit #494172
Huntsville, Texas 77349