



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 29, 1994

Mr. Douglas A. Poneck
Law Offices of Escamilla & Poneck
1200 South Texas Building
603 Navarro
San Antonio, Texas 78205-1826

OR94-194

Dear Mr. Poneck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 24087.

Eagle Pass Independent School District (the "school district"), which you represent, has received four requests for information relating to the school district's student transfers. You have responded to only one of the requests, in which the requestor seeks:

1. A copy of the student transfer policy pertaining to inter campus transfers
2. A copy of the Special Transfer Form used to apply for or to request a student inter campus transfer.
3. First, Second, Third, and Fourth grade rosters of students registered to attend Class Elementary School as of August 17, 1993 [including:] . . . student names; dates of enrollments; dates of birth; student number; names of the parents or persons responsible for registering the student; student address, physical and mailing; [and] name of the campus or school where transfer students were previously enrolled.
4. A copy or copies of the conclusions based on any and all investigations conducted by Mr. Floyd Kocker, Mr. de la Garza, and

You object to releasing information responsive to categories 3 and 4 above and claim that the federal Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, makes it confidential.

Section 552.026 of the Government Code incorporates the requirements of FERPA into the act. Open Records Decision No. 431 (1985). FERPA provides the following:

No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein *other than directory information . . .*) of students without the written consent of their parents to any individual, agency, or organization

20 U.S.C. § 1232g(b)(1) (emphasis added).¹ "Education records" are records that

- (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.

Id. § 1232g(a)(4)(A); *see also* Open Records Decision Nos. 462 (1987) at 14-15; 447 (1986). Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." Open Records Decision Nos. 332 (1982); 206 (1978).

The general prohibition against release of information, however, does not apply to "directory information." "Directory information" may be released under FERPA after compliance with notice requirements that afford affected students the right to object to the release of directory information relating to them. 20 U.S.C. § 1232g(a)(5)(B); *see also* Open Records Decision Nos. 244, 242 (1980); 229 (1979). "Directory information" includes, but is not limited to, the following:

the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

¹Section 1232g(d) provides that "whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student."

20 U.S.C. § 1232(g)(a)(5)(A). An educational institution may establish additional categories of directory information, provided that it complies with federal notice requirements. *See* 34 C.F.R. §§ 99.3, .37; *see also* Open Records Decision Nos. 244 (1980); 151 (1977).

We have examined the information submitted to us for review. You have only submitted information responsive to category 3. We note that much of the information requested in this category falls within the definition of "directory information." Accordingly, the school district, after complying with federal notice requirements, must release the requested rosters to the extent that they include only the student's name, dates of enrollment, date of birth, and address. We note, however, that FERPA does not define as "directory information" information indicating whether a student has been transferred. The United States Department of Education's Family Policy Compliance Office advises us that it is unaware of any previous instance in which the definition of "directory information" has included information indicating whether a student has been transferred. Such information, absent a determination from the Family Policy Compliance Office that directs otherwise, thus falls within FERPA's general confidentiality provisions. Accordingly, we conclude that the school district may release such information only as provided under FERPA.² The school district may release the remainder of the requested information only as provided under FERPA.³

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 contact this office.

Yours very truly,



Susan Garrison
Assistant Attorney General
Open Government Section

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²If the school district, as requested, released the names of the previous schools attended only for those students who were transferred, the school district would reveal which students were transferred and thus would violate FERPA's confidentiality provisions.

³Questions about FERPA can be directed to:

Family Policy Compliance Office
Department of Education
400 Maryland Avenue, S.W.
Washington, D.C. 20202-4605
(202) 732-1807

Ref.: ID# 24087
ID# 24176
ID# 24724
ID# 24816

Enclosures: Submitted documents

cc: Mr. George Bozovich
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(w/o enclosures)