



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 24, 1995

Mr. Robert A. Schulman  
Schulman, Walheim, Heidelberg &  
Acevedo, Inc.  
745 E. Mulberry, Suite 700  
San Antonio, Texas 78212

OR95-669

Dear Mr. Schulman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30408.

The Alamo Community College District (the "district") received a request for the qualifications of applicants for employment as piano instructors. You have submitted copies of recommendations regarding an applicant which were provided by the University of Michigan's (the "university") career placement office.<sup>1</sup> The university included a "notification of privacy" with the documents provided to the district asking that they be withheld in accordance with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.

You assert that the records must be withheld in accordance with section 552.026 of the Government Code and FERPA. Section 552.026 incorporates the Family Educational Rights and Privacy Act of 1974 ("FERPA"), into the Open Records Act, providing that the act

does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

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<sup>1</sup> You state that you have withheld certain other information responsive to the request pursuant to section 552.102. You have not provided copies of this information, nor do we address this information in our ruling. This ruling addresses only materials submitted to this office--letters of recommendation and associated documents relating to a single applicant.

Gov't Code § 552.026; *see also* Open Records Decision No. 431 (1985). FERPA defines "education records" as 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).

Thus, the definition of educational records provided in FERPA would include the records at issue while they were held by the University of Michigan, because they relate to a current or former student. The records regarding an applicant for employment at an educational institution, however, are not generally "student records" of that institution. Open Records Decision No. 467 (1987). Because you do not assert that the affected applicant is a student, you may not withhold the letters of recommendation and related information held in the applicant file.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Government Section

LRD/LMM/rho

Ref.: ID# 30408

Enclosures: Submitted documents

cc: Mr. Joe Rosenthal  
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(w/o enclosures)