



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 31, 1995

Mr. Murray Watson, Jr.  
General Counsel  
Texas State Technical College System  
P.O. Box 1308  
Waco, Texas 76703

OR95-731

Dear Mr. Watson:

You have asked 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# 32611.

You represent the Texas State Technical College System (the "TSTC system"). A request for information was directed to the TSTC system's Harlingen campus. That request contained 28 items submitted in the form of questions and requests for specific records. Your letter to this office states that the request does not identify any specific documents but rather seeks answers to questions, the answers to which would require "extensive research."

It appears from your correspondence that you have identified some records that would be responsive to part of the inquiry. If you have not already done so, you must provide the requestor public records that you have identified as being responsive.<sup>1</sup> Since you did not submit any records responsive to this office for review, we are unable to determine whether any of these records are excepted from disclosure under chapter 552.

We note, however, that you assert that some of the records at issue may be protected from disclosure pursuant to the Federal Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g, as incorporated by section 552.026 of the Government Code. See Open Records Decision No. 431 (1985). Section 552.026 provides:

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<sup>1</sup>You state that some of the responsive records are public records "available at the Harlingen campus." We note that the requestor asked to be provided copies of responsive information. Pursuant to section 552.228, a governmental body is required to provide "a suitable copy of a public record *within a reasonable time* after the date on which the copy is requested." (Emphasis added.) Since the request was received March 24, 1995, we assume that these copies have already been provided to the requestor.

This chapter 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.

FERPA denies federal funds to a postsecondary educational institution if it has a policy or practice of releasing education records or personally identifiable information, other than directory information, contained in education records without the written consent of the student. 20 U.S.C. §§ 1232g(b)(1), (d). "Education records" are defined in FERPA as 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 an agency or institution." *Id.* § 1232g(a)(4)(a). However, 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).

Although you did not supply this office documents to review, it appears that some responsive information might be directory information. *See* 20 U.S.C. § 1232g(5)(A). Regulations promulgated under FERPA define directory information as follows:

Directory information means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to the student's name, address, telephone listing, date, and place of birth, major field of study, participation in official 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.

34 C.F.R. § 99.3

The general prohibition against release of student information 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 (1980), 242 (1980), 229 (1979). We conclude that the TSTC system, after complying with federal notice requirements, must release this information to the extent that it includes directory information as defined under FERPA.

As to your contention that responding to some of the questions would require the TSTC system to compile new information or create new records, we note that chapter 552 does not require a governmental body to compile new information or create new records. *See* Gov't Code § 552.002 (defining a "public record"); *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed w.o.j.) (official could not be compelled to produce documents not in his possession); Open Records Decision Nos. 452 (1986) at 2-3, 342 (1982) at 2 (Open Records Act

applies only to documents already in existence).<sup>2</sup> However, the TSTC system has an obligation to make a good faith effort to relate a request for information to the records it holds. *See* Open Records Decision No. 87 (1975). In Open Records Decision No. 561 (1990) at 8-9, this office stated its policy regarding how a governmental body should treat an overbroad or ambiguous request for information:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. It is nevertheless proper for a governmental body to require a requestor to identify the records sought. For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. [Citations omitted.]

We note that our review of the requestor's inquiries indicates that a number of the requests do not seem confusing or ambiguous, as you claim. For example, the requestor asked for travel expenditures and travel related expenditures for the 1993-94 fiscal year for certain named employees or officials. You suggest that this request is "too broad and global to specify a particular public record, calls for judgment and research" and is not a request for a public record under chapter 552. We assume that the TSTC system has at least one document responsive to this inquiry or would otherwise advise the requestor that there are no responsive documents. If there are a number of responsive documents, the requestor may choose to review all of the information or to narrow his request further.

For the foregoing reasons, we conclude that the TSTC system must immediately make available to the requestor all documents that may be responsive to the request that are not otherwise confidential under FERPA. If you have any questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/LRD/rho

Ref.: ID# 32611

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<sup>2</sup>We note also that the Open Records Act is not a substitute for the discovery process under the Texas Rules of Civil Procedure. *See* Attorney General Opinion JM-1048 (1989) at 3 ("the fundamental purposes of the Open Records Act and of civil discovery provisions differ"); Open Records Decision No. 551 (1990) at 3-4 (discussion of relation of Open Records Act to discovery process).

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