



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 28, 1995

Ms. Tami Davis Sayko
Assistant General Counsel
The Texas A&M University System
John B. Connally Building
301 Tarrow, 6th Floor
College Station, Texas 77843-1230

OR95-883

Dear Ms. Sayko:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 33599.

The Texas A&M University System (the "TAMUS") received a request for a tape recording of a meeting of the grievance committee, during which the grievance committee considered a complaint from the requestor. You have submitted for our review a copy of the tape recording and copies of handwritten records documenting the incident on which the complaint is based.¹ See Gov't Code § 552.303. The handwritten documents are not responsive to the written request.

You seek to withhold the requested tape recording pursuant to section 552.026 of the Open Records Act.² Section 552.026 of the Government Code governs the release of

¹You inform us the requestor verbally requested the written documentation you have submitted for our review. Under the Open Records Act, the attorney general is authorized to determine whether a governmental body may or must withhold information sought in a written request. Gov't Code § 552.301(a). The Open Records Act does not authorize the attorney general to consider information that a requestor verbally has requested. *Id.* Consequently, we have no authority to determine whether the TAMUS may withhold the written documentation the requestor verbally has requested.

²You also cite section 552.114 of the Government Code. Section 552.114(a) excepts from required public disclosure "information in a student record at an educational institution funded wholly or partly by state revenue." Section 552.114 applies to schools that do not receive any federal funding. See Open Records Decision No. 431 (1985) at 3 (stating that federal law prevails over inconsistent state law). We assume for purposes of this letter that the TAMUS receives federal funding.

student records by an educational institution that receives federal funds under programs the federal government administers. *See* Open Records Decision No. 480 (1987) at 3 (quoting Open Records Decision No. 427 (1985)). Section 552.026 provides as follows:

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.

We therefore must consider whether the TAMUS may release the requested tape recording under the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g.

FERPA provides that no federal funds will be made available under an applicable program to an educational agency or institution that releases to anyone but certain enumerated federal, state, and local officials and institutions personally identifiable information (other than directory information³) contained in a student's education records unless the student has authorized otherwise. *See* 20 U.S.C. § 1232g(d). "Education records" consist of those records that contain information directly related to a student and that an educational agency or institution or a person acting for such agency or institution maintains. *Id.* § 1232g(a)(4)(A).

You do not seek to withhold the requested tape recording because it directly relates to the requestor. Rather, you believe the tape recording may contain references to students who witnessed the event complained of and submitted written statements about the event. We note that the written statements, although handwritten, are unsigned.

FERPA requires an educational institution to withhold only personally identifiable information directly related to a student. Given that the written statements are unsigned, we believe it likely that grievance committee members may have discussed the statements without naming particular students. As your letter suggests, the tape recording is largely inaudible; we are unable to ascertain whether the committee in fact named particular students other than the requestor. We also are unable to ascertain whether students other than the requestor testified before the committee. If the committee neither named particular students nor heard testimony from students who witnessed the incident, we do not believe any of the information in the tape recording is personally identifiable. In that event, the TAMUS must release the tape recording to the requestor.

³For the purposes of FERPA, the term "directory information" relating to a student includes: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height if the student is a member of an athletic team, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution the student attended. 20 U.S.C. § 1232g(a)(5)(A). An educational agency or institution that makes public directory information must comply with the notice provisions in section 1232g(a)(5)(B).

Incidentally, although the handwritten statements are not responsive to the written request, this office determined in Open Records Decision No. 224 that the release of a student's handwritten comments, even if unsigned, would make the identity of the student author easily traceable. Open Records Decision No. 224 (1979) at 2. Section 552.114, as well as FERPA, therefore excepts a student's handwritten comments from required public disclosure. *See id.*

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 may not be relied upon as a previous determination under section 552.301 of the Government Code regarding any other records. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RHS/rho

Ref.: ID# 33599

Enclosures: Submitted information