



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 14, 1997

Mr. J. Robert Giddings  
The University of Texas System  
Office of General Counsel  
201 West Seventh Street  
Austin, Texas 78701-2981

OR97-0349

Dear Mr. Giddings:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 103738.

The University of Texas at Arlington (the "university") received a request for "[a]ny sexual harassment complaints made against UT-Arlington administrators, faculty and staff within the past five years and all documents on how the complaints were resolved." First, you contend that some documents are education records as defined by the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g, and thus comes under the protection of sections 552.026, 552.101, and 552.114 of the Government Code. Second, you assert that some of the information is protected by common-law privacy under section 552.101. You have submitted a representative sample of the requested documents for our review.<sup>1</sup> We have considered the exceptions you claim and reviewed the information you have marked.

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. 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, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). You inform us that, pursuant to FERPA, the university has deemed certain records to be education records and that information containing personally identifiable information regarding a student will be redacted. We agree that such information must be withheld pursuant to sections 552.026 and 552.114.

Next, you state that the university agrees to release documents responsive to the request concerning job performance, disciplinary actions, and how the complaints were resolved. However, you also assert that some documents are excepted from disclosure under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court stated that

information . . . is excepted from mandatory disclosure under Section 3(a)(1) as information deemed confidential by law if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

540 S.W.2d at 685; Open Records Decision No. 142 (1976) at 4 (construing statutory predecessor to Gov't Code § 552.101).

You state that the university will exclude those documents containing personal financial information such as insurance, tax, and retirement matters. This office stated that financial information relating to an individual person "ordinarily satisfies the first requirement of common-law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities." Open Records Decision No. 373 (1983) at 3. However, as you have not submitted this information for our review, we cannot make a ruling with regards to these documents.

Lastly, you assert that the remainder of the documents in the sexual harassment investigation files are excepted from disclosure pursuant to common-law privacy as incorporated by section 552.101 and recognized by *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, write denied).

In *Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

A review of the representative sample of records you submitted shows that one of the investigation files does not contain an adequate summary of the sexual harassment investigation. Therefore, the documents in that file must be released with the identities of victims and witnesses redacted.

The other two investigation files we have before us do contain adequate summaries of the investigations into alleged sexual harassment. Therefore, you may withhold the documents in the investigation files except for the summaries which must be disclosed pursuant to *Ellen*, 840 S.W.2d at 525. However, the identities of the victims and witnesses to the alleged sexual harassment are protected by the common-law privacy doctrine and must be withheld. *Id.* Contrarily, the public interest in the statements and the identities of the alleged harassers outweighs any privacy interest the alleged harassers may have in that information; therefore, the university may not withhold this information under section 552.101. The public has no legitimate interest in the details of the victims' and witnesses' personal statements, and they may not be disclosed. *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 should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/rho

Ref.: ID# 103738

Enclosures: Submitted documents

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