



May 14, 1999

Mr. E. Lynn Rodriguez
General Counsel
Texas Higher Education Coordinating Board
P.O. Box 12788
Austin, Texas 78711

OR99-1332

Dear Mr. Rodriguez:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124123.

The Texas Higher Education Coordinating Board (the "board") received a request for the following information: (1) complaints filed against Le Chef College of Hospitality ("Le Chef") and (2) correspondence from the board to Le Chef and/or its proprietor concerning the complaints. You state that "[t]he attorney for Le Chef has objected to the disclosure of this information." Apparently acting on behalf of Le Chef, you set forth reasons why the documents requested "may be exempt from disclosure."

You state that the board's investigation is not complete and cite to section 552.022(1) of the Government Code for the proposition that the requested complaints and correspondence are not subject to disclosure under the Public Information Act. Section 552.022 states, in part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body;

Section 552.022 by its terms does not restrict the types of information that are public generally. Section 552.022(1) does not provide an exception from disclosure for the complaints and correspondence at issue.

You also state that "Le Chef has asserted that certain information contained in the responsive documents is related to [a complainant's] employment with Le Chef" and thus is excepted

from disclosure under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by constitutional or common-law privacy and under certain circumstances excepts from disclosure private facts about individuals. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from public disclosure under a common-law right of privacy when the information is (1) highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1. None of the information in this particular complaint is protected from disclosure by section 552.101.

You also state that the investigation of Le Chef “may result in litigation and Le Chef asserts that the responsive documents are exempt from disclosure under section 552.103(a)” of the Government Code. Section 552.103(a) was designed to protect the litigation interests of a governmental body rather than the rights of third parties. Open Records Decision Nos. 588 at 4 (1991), 551 at 3 (1990), 542 at 4 (1990). You assert that Le Chef seeks to withhold the requested records, but do not argue that the board has any interest in withholding the records. As you do not assert that the board’s litigation interests are implicated by release of the records, section 552.103(a) is not applicable in this situation.

You state that the responsive documents “may be exempt from disclosure because they constitute educational records under section 552.026 and 552.114 of the Open Records Act.” Section 552.026 of the Government Code excepts from disclosure educational records unless released in conformity with the Family Educational Rights and Privacy Act (“FERPA”), title 20 of the United States Code, section 1232g. FERPA provides that federal funding shall not be made available to “any educational agency or institution which has a policy or practice of permitting the release of educational records” of students without the written consent of the students attending an institution of post-secondary education. 20 U.S.C. § 1232g(b)(1), (d). Educational records are those records that “contain information directly related to a student and are maintained by an educational agency or institution.”¹ *Id.* § 1232g(a)(4)(A). An educational agency or institution is defined as “any public or private agency or institution which is the recipient of funds under any applicable program.” *Id.* § 1232g(a)(3). The requestor has asked for complaints made *to* the board and for correspondence *from* the board. As the board does not appear to be an educational agency or institution, we fail to see how

¹Section 552.114 requires that “information in a student record at an educational institution funded wholly or partly by state revenue” must be withheld, but may be made available on the request of the student or other authorized person.

The term “student record” in section 552.114 has been generally construed to be the equivalent of “education records.” See generally Attorney General Opinion H-447 (1974); Open Records Decision Nos. 539 (1990); 477 (1987); 332 (1982).

complaints made to the board and correspondence from the board are protected educational records.

We note that you submitted to this office records, such as grade point status on named students, that may be protected. Generally, only information which serves to identify students is excepted from disclosure under FERPA. Open Records Decision No 332 (1982) at 3. We have marked samples of the types of records that must be de-identified as to students if: (1) these are education records that were submitted to the board by Le Chef, (2) the board holds the records on behalf of Le Chef, and (3) you construe education records as being responsive to the written request for information. Also, some of the documents that do not appear to be education records contain social security numbers. If a social security number was obtained or maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990, it is confidential under section 405(c)(2)(c)(viii)(I) of title 42 of the United States Code. Open Records Decision No. 622 (1994). Records responsive to the request for information must otherwise be disclosed.

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 regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref: ID# 124123

encl. Submitted documents

cc: Ms. Lisa Tozzi
Assistant Politics Editor
The Austin Chronicle
P.O. Box 49066
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(w/o enclosures)