



May 13, 2002

Mr. Chong H. Choe
Assistant General Counsel
University of North Texas System
P.O. Box 310907
Denton, Texas 76203-0907

OR2002-2514

Dear Mr. Choe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162783.

The University of North Texas System (the "system") received a request for the requestor's husband's Mid-Point portfolio review scoring sheets. You claim that the requested information is excepted from disclosure under sections 552.026 and 552.114 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the requestor indicates that she previously requested the information sought in her February 25, 2002 request in a request dated February 5, 2002, and, thus, that the system failed to request a decision from this office within ten business days as required by section 552.301 of the Government Code. A review of the request faxed to the system by the requestor on February 5, 2002, however, reveals that the requestor did not request the Mid-Point portfolio review scoring sheets in the request received by the system on February 5, 2002. The system states that it received only one request from the requestor on February 5, 2002, and that it did not receive the request dated February 5, 2002 that the requestor submitted with her February 25, 2002 request, which does request the Mid-Point Portfolio review scoring sheets. Therefore, as the system did not receive a request for the Mid-Point portfolio review scoring sheets until February 25, 2002, we conclude that the system did comply with the requirements of section 552.301 of the Government Code. See Open Records Decision Nos. 554 (1990), 552 (1990).

We will now address your arguments against disclosure with respect to the submitted information. You claim that the submitted information must be withheld under section 552.026 and 552.114 of the Government Code. The Family Education Rights and Privacy Act ("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 Nos. 554 (1990), 552 (1990) (when faced with a factual dispute, this office must rely on the representations of the governmental body requesting our opinion).

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 [FERPA]."

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution must 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 must 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. In this instance, however, you have submitted the documents at issue to this office for consideration. Therefore, we will consider whether these documents contain information that is excepted from disclosure under sections 552.026 and 552.114 of the Government Code.

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). Further, information that does not *directly* identify a student but would nevertheless make a student's identity easily traceable, must also be withheld. *See, e.g.,* Open Records Decision No. 224 (1979) (student's handwritten comments would make identity of student easily traceable and such comments are therefore excepted by statutory predecessor to section 552.114). You state that the requested score sheets provide scores for each student that participated in a Mid-Point Review of portfolios for a particular course. You explain that the portfolios were evaluated anonymously by number and that there is no record of the student names that correlate to the numbers listed on the scoring sheets for each portfolio. You claim, however, that the scoring

sheets contain notations that may be student names. Thus, to the extent the submitted scoring sheets contain students' names, we agree that the system must withhold the students' names from disclosure. You also claim that the scoring sheets contain notations that reflect ideas or concepts that describe the portfolios being evaluated and that these notations could be used to identify students. We agree. Thus, any notations in the submitted documents that reflect ideas or concepts that describe the portfolios being evaluated must also be withheld pursuant to FERPA.

We note that a student at a postsecondary institution has a right to inspect his or her own education records. 20 U.S.C. § 1232g(a)(1)(A); *see* Open Records Decision No. 431 (1985) (Public Information Act's exceptions to required public disclosure do not authorize withholding of "education records" from adult student). The requestor indicates that her husband has filed a release with the system allowing the system to release his education records to her. If the requestor's husband has provided the system with written consent allowing the release of his education records to the requestor as required by subsection (b)(2), the requestor has a right of access to information that identifies her husband. *See* 20 U.S.C. 1232g(b)(2).

To summarize, we conclude that the system must withhold the student names and any notations that reflect ideas or concepts that describe the portfolios being evaluated pursuant to FERPA, with the exception of such information that identifies the requestor's husband if the system has received written consent for the release of his education records as required by FERPA. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 162783

Enc: Submitted documents

c: Ms. Rebekah de Peo-Christner
8401 Serenity Way
Denton, Texas 76210
(w/o enclosures)