OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS
JOHN CORNYN

October 25, 2002

Mr. Hieu T. Dang
Assistant General Counsel
University of Houston System
311 E Cullen Building
Houston, Texas 77204-2028

OR2002-6054

Dear Mr. Dang:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173018.

The University of Houston (the "university") received a request for:

1) all documents relating to the requestor, including his official student file,

2) specific criteria used in the selection of candidates to the Ph.D. program in Counseling Psychology,

3) information relating to the selection criteria for incoming psychology doctoral students for Fall 2002,

4) information relating to selection criteria for prospective doctoral applicants who were selected for faculty interviews in Spring 2002,

5) information concerning the identity of the person responsible and the reason for a certain class cancellation, and

6) information concerning the identity of those who attended the meeting to review the requestor's petition for reinstatement.

You claim that a portion of the requested information is excepted from disclosure under section 552.026 in conjunction with section 552.114 of the Government Code. You do not claim an exception for, nor have you submitted, the remainder of the requested information. We therefore presume you have released such information to the requestor. If you have not,

you must do so at this time. Gov't Code §§ 552.301, .302. We have considered the exception you claim and reviewed the submitted information.

We begin by noting that the submitted document may contain information that is protected from public disclosure under the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 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).

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.

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). "Student" is defined by FERPA as "any individual who is or has been in attendance at an educational . . . institution and regarding whom the . . . institution maintains education records." 20 U.S.C. § 1232g(a)(6). The document you have submitted contains a list of names with corresponding grade point averages and test scores. You tell us that the list is the ratings of the applicants prior to interview selection. We cannot discern from the document which applicants have attended or currently attend the university. You must withhold the submitted information to the extent it pertains to individuals falling within the definition of student under FERPA. You must release the information concerning those applicants who did not attend the university. We

note that the requestor's name appears on the list. The requestor has a special right of access to his own identifying information. *See* 20 U.S.C. §§ 1232g(a)(1)(A) (providing for parental access to education record), 1232g(d) (providing that student attending post-secondary institution assumes all rights accorded to parents under FERPA).

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).

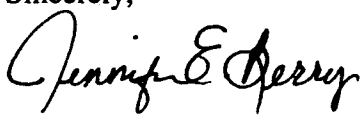
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following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



Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/sdk

Ref: ID# 173018

Enc: Submitted documents

c: Mr. David Erickson
5401 Rampart, #228
Houston, Texas 77081
(w/o enclosures)