



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 22, 2004

Mr. Stephen D. Broyles  
Dean of Administrative Services  
North Central Texas College  
1525 West California Street  
Gainesville, Texas 76240-4699

OR2004-5081

Dear Mr. Broyles:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203767.

North Central Texas College (the "college") received a request for the audited financial statements for the college for the past two years, as well as "a softcopy (computer media format) directory listing of students at [the college]," to include the name, local mailing address, permanent mailing address, local telephone number, e-mail address, county of residence, major, classification, and status of each student. You state that the college will provide the requested financial statements to the requestor. Further, we understand you to represent that the college does not object to the release of the names, local addresses, local telephone numbers, counties of residence, majors, and classifications of students of the college. *See* Gov't Code § 552.231. We therefore assume that the college has released this information to the requestor. If not, you must release it immediately. *See* Gov't Code §§ 552.006, .301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under the circumstances). You claim that the requested e-mail addresses are excepted from disclosure under section 552.137 of the Government Code. We have considered your comments and reviewed the submitted representative sample of information.<sup>1</sup>

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<sup>1</sup> 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.

As a preliminary matter, you indicate that you have asked the requestor to clarify the portion of the request concerning the "status of each student." You sought clarification of the request from the requestor, and you have submitted a copy of the requestor's written response. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body); *see also* Open Records Decision No. 663 at 5 (1999)(discussing requests for clarification). From our review of the information you have submitted, it appears that the college had not received a response from the requestor as of the date you requested this ruling from our office. Accordingly, we determine that the college need not respond to the portion of the request concerning student "status" until such time as you receive clarification of the request from the requestor. We note, however, that when the college receives the clarification, you must seek a ruling from this office before withholding any responsive information. *See* Open Records Decision No. 663 (1999).

Next, while you state that the requested permanent mailing addresses for students of the college are not available in the "computer media format" specified by the requestor, you indicate that the college does maintain this information in the college's individual student files. You indicate that present request requires the college to retrieve the permanent mailing addresses from the individual file of each student. A governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). In this case, because the college does maintain the requested permanent mailing addresses, we determine that the college must release this information unless the it falls within one of the exceptions to the Public Information Act. Gov't Code §§ 552.002, .006, .021; *see also Indus. Found. v. Tex. Indus. Accident Bd.*, 540S.W.2d 668, 687 (Tex. 1976) (administrative difficulty of producing information subject to Act is not basis for withholding it).

We note, however, that the requested permanent addresses and e-mail addresses may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the Family Educational Rights and Privacy Act of 1974 ("FERPA"), section 1232g of title 20 of the United States Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. 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. *See* 20 U.S.C. § 1232g(b)(1), (d) (for student eighteen years of age or attending institution of postsecondary education, permission or consent required of and rights accorded to parent under FERPA are required of and accorded to student); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information).

Section 552.026 of the Government Code incorporates FERPA into chapter 552 of the Government Code. *See* Open Records Decision No. 634 at 6-8 (1995). 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.

Gov't Code § 552.026. "Education records" under FERPA are those records that contain information directly related to a student and that are maintained by an educational agency or institution, or by a person acting for such agency or institution. *See* 20 U.S.C. § 1232g(a)(4)(A). This office has determined that education records must generally be withheld under FERPA to the extent reasonable and necessary to avoid personally identifying a particular student. *See* Open Records Decision Nos. 332 (1982), 206 (1978). However, an educational agency or institution may release directory information, in compliance with procedures specified under FERPA. *See* 20 U.S.C. § 1232g(a)(5)(B).

Under FERPA, "directory information" includes the following:

the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

20 U.S.C. § 1232g(a)(5)(A). Thus, the types of directory information enumerated under FERPA do not include an e-mail address, and do not distinguish between a student's local and permanent address. FERPA allows an educational institution to designate categories of information to be made public as directory information, provided the institution gives notice of the categories of information designated as directory information and allows reasonable time for a student to inform the institution not to release any or all of the student's information without consent. *See* 20 U.S.C. § 1232g(a)(5)(B).

You do not inform us whether the college has designated permanent addresses and e-mail addresses as directory information pursuant to section 1232g(a)(5)(B). Absent such a designation by the college, we determine that the permanent addresses and e-mail addresses at issue constitute education records of students of the college and are confidential under FERPA and must be withheld under section 552.101. In the event the college has designated this information as directory information, however, the permanent addresses and e-mail addresses at issue are not confidential under FERPA and may not be withheld on that basis.

In the event the college has designated students' e-mail addresses as directory information, however, we note that this information may be excepted from disclosure under section 552.137 of the Government Code. Section 552.137 provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 excepts certain e-mail addresses of members of the public that are not within the scope of section 552.137(c), unless the relevant members of the public have affirmatively consented to the release of the e-mail addresses. In this case, the e-mail addresses in the submitted information are within the scope of section 552.137(a). Thus, in the event the e-mail addresses at issue are not confidential under FERPA, we determine that the e-mail addresses must be withheld under section 552.137 unless the college has received affirmative consent to release them.

In summary, the college need not respond to the request for "status" information at this time. Absent a designation by the college that the requested permanent addresses and e-mail addresses are directory information, the college must withhold this information pursuant to section 552.101 in conjunction with FERPA. In the event the college has designated the permanent mailing addresses as directory information, the permanent mailing addresses are not confidential under FERPA and must be released to the requestor. Furthermore, in the event the college has designated the e-mail addresses as directory information as provided under FERPA, the e-mail addresses are not confidential under FERPA. In that case, however, the e-mail addresses are excepted from disclosure under section 552.137 of the Government Code and must be withheld unless the college has received affirmative consent to release them.

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 thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten 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 ten 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 ten 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); *Tex. Dep't of Pub. 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 ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 203767

Enc: Submitted documents

c: Mr. Steve Gaylord  
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(w/o enclosures)