



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 1, 2006

Ms. Gita M. Bolt
Interim General Counsel
Texas Southern University
3100 Cleburne Street
Houston, Texas 77004

OR2006-02029

Dear Ms. Bolt:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 246571.

The Texas Southern University (the "university") received a request for a copy of the requestor's Texas Practice midterm exam. The requestor subsequently narrowed his request to include: 1) any and all of his writing, 2) the numbers of the questions to include the Roman Numerals to the double tiered questions, 3) letters of the answers, 4) the scantron, and 5) his answer to the essay question. You claim that the requested information is excepted from disclosure under sections 552.101, 552.114, and 552.122 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You note that the submitted information is subject to the Family Educational Rights and Privacy Act of 1974 ("FERPA"). *See* 20 U.S.C. § 1232g(b)(1). Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information protected by other statutes, such as 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. *See id*; *see also* 34

C.F.R. § 99.3 (defining personally identifiable information). Under FERPA, “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. *See* 20 U.S.C. § 1232g(a)(4)(A).

Upon review, we find that the submitted information consists entirely of records maintained by the university that directly relate to a student of the university. Accordingly, the submitted information constitutes education records for purposes of FERPA. Under FERPA, a university student generally has an affirmative right of access to the student’s own education records, although this right does not extend to information in the student’s record that identifies other students. *See* 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.3; *see also* 34 C.F.R. § 99.12(a) (“If the education records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.”). Thus, the requestor in this case has a right of access under FERPA to education records pertaining to him.

We note that the submitted FERPA records accessible by the requestor generally may not be withheld from the requestor pursuant to an exception to disclosure under the Act. *See Equal Employment Opportunity Comm’n v. City of Orange, Texas*, 905 F. Supp 381, 382 (E.D. Tex. 1995) (federal law prevails over inconsistent provision of state law); *see also* Open Records No. 431 (1985) (when conflict arises between provisions of Act and FERPA, federal statute prevails). Accordingly, we conclude that the university may not withhold any portion of the submitted information under section 552.122 of the Government Code. Therefore, the university must release the submitted information to the requestor.

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, upon receiving this ruling, the governmental body

will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, 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 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 Office of the Attorney General 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. 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,



L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/segh

Ref: ID# 246571

Enc. Submitted documents

c: Mr. Michael Gonzalez
3422 Blodgett
Houston, Texas 77004
(w/o enclosures)