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Case of the Month

University required to release student records after failing to timely seek an attorney general opinion.

The Austin-American Statesman sent a [Texas Public Information Act](#) (PIA), Texas Government Code chapter 552, request to The University of Texas at Austin seeking final results of student disciplinary hearings that involve a crime of violence or nonforcible sex offense. The Statesman's request mirrored information permitted to be released under the federal [Family Education Rights and Privacy Act of 1974 \(FERPA\)](#), 20 U.S.C. § 1232g(b)(6)(B). The university did not produce the requested information and did not seek an attorney general opinion because it believed it did not have to release it under Texas Government Code section 552.114, which does not require an education institution to request permission from the attorney general before redacting protected student records information.

The Statesman filed suit against the university and its president seeking disclosure of the information, arguing the university could not withhold the requested information because FERPA specifically allowed its release, therefore no exception to the PIA applied. The Statesman also argued the information was subject to disclosure because the university failed to timely request an opinion from the attorney general and did not have a compelling reason to withhold the information. Both parties sought summary judgment, and the trial court agreed with the Statesman. The university appealed.

Since the university sought to withhold all information regarding the records requested by the Statesman, not just redact the information it believed was protected by FERPA, the court of appeals determined the university must still seek an attorney general opinion before denying the Statesman's request. The court also determined Section 552.114 did not provide the university a compelling reason to withhold all information regarding the Statesman's request because the Statesman's request was narrowly drafted to include only student information considered by FERPA to be non-confidential and subject to disclosure under the PIA. In addition, the court determined the Statesman's request was not confidential information excepted from disclosure because did not fall within any recognized zone of constitutional privacy protected by Texas Government Code section 552.101. The court affirmed the trial court's judgment. [Univ. of Tex. at Austin v. Gatehouse Media Tex. Holdings, II, Inc.](#), No. 08-20-00157-CV, 2022 WL 17330377 (Tex. App. —El Paso Nov. 29, 2022, no pet. h.).

Why is This Case Significant?

A community college must timely seek an attorney general opinion if it wishes to withhold all information related to student records, but can redact the requested information actually protected by FERPA without requesting an attorney general opinion. TASB Community College Services is monitoring for an appeal.

Highlights

Welcome new staff attorney
[Marc Cayabyab](#)

New on eLaw:
[Deadlines for May 2023 CC Elections](#)
[Notice of Candidate Filing Period for May 2023 Election](#)

Resources

[Texas Higher Education Coordinating Board](#)
[Texas Legislature](#)
[Texas Statutes](#)
[Texas Attorney General](#)
[U.S. Department of Education](#)



From the Courts and the Attorney General

Governance

The Texas Attorney General found machine-generated numbers for election ballots complies with [Texas Election Code section 52.062](#), the commissioners court has authority to select the voting system, and the elections administrator has sole authority to select the numbering method. Tex. Att’y Gen. Op. No. [KP-0422](#) (Dec. 15, 2022).

Personnel

Community college police officers who reported alleged theft and other unlawful actions by college employees to college officials and outside law enforcement provided sufficient evidence on their claims that subsequent actions taken against the officers constituted retaliation in violation of the [Texas Whistleblower Act](#), but their challenge against the college’s local board meeting and grievance policies failed, in part, because the policies did not violate the [Texas Constitution](#) nor [Texas Government Code section 617.005](#) since the officers had opportunity to address board during public comment. [Burlison v. Collin Cnty. Cmty Coll. Dist.](#), No. 05-21-00088-CV, 2022 WL 17817965 (Tex. App.—Dallas Dec. 20, 2022) (mem. op.).

Former professor who claimed his contract was not renewed due to gender-based discrimination and retaliation in violation of [Title VII of the Civil Rights Act](#) provided sufficient

evidence to overcome summary judgment on his discrimination claim, including evidence he was treated “less favorably than other similarly situated employees outside his protected group,” but his retaliation claim was dismissed because, among other issues, participation in a [Title IX of the Education Amendments of 1972](#) investigation not connected with a formal U.S. Equal Employment Opportunity Commission proceeding does not qualify for Title VII protection. [Boles v. Navarro Coll.](#), No. 3:19-cv-2367-X, 2022 WL 17572094 (N.D. Texas Dec. 9, 2022) (mem.).

Students and Instruction

Former student who was expelled by a university based on a Title IX proceeding overcame summary judgment on Title IX sex discrimination and breach of contract claims because he provided evidence he was discriminated based on sex during the disciplinary hearing, and raised a question of whether a contract between the university and former student was created through the university’s bill of rights, student code of conduct, and policies. [Doe v. Texas Christian Univ.](#), No. 4:22-cv-00297-O, 2022 WL 17631668 (N.D. Tex. Dec. 13, 2022).

U.S. Supreme Court granted *certiorari* in companion cases that challenge the [federal student debt relief program](#). [U.S. Dept. of Ed. v. Brown](#), 143 S Ct. 541 (Dec. 12, 2022). [Biden v. Nebraska](#), 143 S. Ct. 477 (Dec. 1, 2022).



In the News

The Texas Governor renewed the [disaster proclamation](#) issued for affected counties due to coronavirus.

The [88th Legislative Session](#) began January 10, 2023 and will end on May 29, 2023.

The Texas Department of Public Safety issued a [memo](#) stating it would no longer enforce a [prohibition](#) against 18-to-20 year-olds carrying handguns in public.