

## To Tell or Not to Tell?



An overview of the federal and state laws and university policies regulating what information about students and employees can be released and under what circumstances.

By  
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January 2006

1

## To Tell or Not to Tell?

- As state employees, we have access to lots of data - public, private and confidential.
- What can you disclose and to whom?
- Not easy, when in doubt – don't.
- When you have a question – ask: Carol Stallkamp, DPCO

2

## Two Basic Regulations



- FERPA (Family Educational Rights and Privacy Act)

and

- MGDPA (Minnesota Government Data Privacy Act)

3

## Minnesota State Mankato Policy

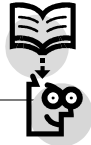
- With respect to student records, Minnesota State Mankato has its own policy, which is found at:

Central policy website:

<http://www.mnsu.edu/acadaf/pdfs/StudentRecordsPolicy.pdf>

4

## FERPA



- This is the federal law that regulates how all schools that accept federal funds handle “education records.”
- Violations of FERPA can lead to inability to obtain federal funds, e.g. financial aid. However, there is generally no ability to sue for damages.

5

## What are Education Records?



- Official data maintained by the school that directly relates to an individually identifiable student.
- Very broad – not just the official file
- Information in any form – including electronic media
- Includes records from admission, financial aid, transcripts, class lists, schedules, graded exams or papers, disciplinary proceedings, photos, work study documents, employment records, etc.

6

## What Records are Exempt:



- “Sole possession” notes of instructors (used to aid memory)
- Law enforcement records
- Employment records for those whose employment is not contingent upon them being a student
- Alumni records
- Medical treatment records

7

## Directory Information



**Information contained in an education record that would not generally be considered harmful.**

### **Our identified directory information is:**

Name	Local address	Permanent address
Email	Date/place of birth	Program/field of study
Class	Degree/honors	Participation in sports/activities

Weight and height for members of athletic teams only  
Dates of attendance at Minnesota State Mankato  
Most recent previous educational agency or institution attended

8

## Directory Information

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- Anything listed as directory info, we must disclose to whoever asks, no matter the purpose.
- Students can request to opt out of the release of directory info. This request must be honored. (You will see this recorded in ISRS as "Release No Information")

9

## Minnesota State Mankato Policy

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- Basically mirrors FERPA with respect to definitions, excluded records, directory information, and procedures
- States that records for PSEO students cannot be accessed by parents without prior written consent (absent an emergency)

10

## Can you honor these requests?

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- A list of the names of all African American Computer Science Majors?
- The email address of all seniors with a GPA of 3.2 or higher?
- Can you identify a student as your student when he/she approaches you and your friend in a restaurant?



11

## Can you honor these requests?

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- A request for the location or phone number where a student works?
- A request to confirm dates of employment for a student?
- The email address of all students to a credit card company?



12

## Student Rights Regarding FERPA



### ○ Primary Rights

- To inspect and copy their educational records
- To request to amend an education record if it is inaccurate or incomplete.
- To have some control over disclosure of education records
- To file a complaint with the FERPA office in Washington DC

These rights begin at time of application (even for PSEO students) and continue even after a student leaves. Also applies to international students with one exception - the BCIS may obtain access to certain information without consent.

13

## Who Can Access Education Records



- Anyone with prior written consent of student (is the consent voluntary?)
- Anyone seeking directory data (unless student has opted out)
- School officials with legitimate educational or business interest
- Other schools to which a student is transferring
- Specified officials for audit or evaluation purposes

14

## Who Can Access Education Records

Under FERPA and Minnesota State Mankato Policy:

- School official can be employee, contractor, emergency worker, student, member of Board of Trustees, *so long as*
- Legitimate educational interest means: performing a task in your position description or contract; a task related to discipline of the student; providing a service to student or family, e.g. health care, financial aid, or maintaining security of the campus)

15

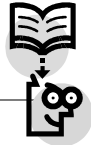
## Who Can Access Education Records



- Appropriate parties in connection with financial aid to a student
- Organizations conducting studies on behalf of the school
- To comply with judicial orders or subpoenas (if you receive a subpoena, call Carol Stallkamp immediately)
- Appropriate officials in case of a health and safety emergency
- State and local authorities, as specified by law only

16

## MGDPA



Minnesota State Mankato's  
Data Practices Compliance Official is:  
CAROL STALLKAMP

All formal requests for data or unresolved questions regarding the release of information should be forwarded to Carol.

17

## MGDPA



- Violations of the MGDPA can lead to lawsuits for damages against the institution and the individual. In addition, criminal penalties are available for willful violations.
- Example: Navarre v. So. Washington County Schools led to a \$520,000 jury verdict against a school district and the principal for releasing information to the newspaper related to the ongoing investigation of a teacher.
- Violations can also lead to progressive discipline.

18

## What is government data?



- Data means all data collected, created, received, maintained or disseminated by a state agency regardless of its physical form, storage media or conditions of use.
- Just because you say something verbally does not mean it is not data – if it came from data it is still data.
- Data is not your “impressions” or “observations” so long as they are not based on government data.

19

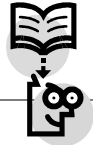
## Personnel Data



- Can be public, private or confidential depending on the type
- Presumed to be private unless specifically designated as public

20

## Public Personnel Data



- Name
- Actual Gross Salary
- Salary Range
- Contract Fees
- Actual Gross Pension
- Value and Nature of Benefits
- Basis for other reimbursements
- Job Title
- Job Description
- Education and Training Background
- Previous Work Experience
- Date of first and last employment

21

## Public Personnel Data, cont.



- The existence and status of any complaints against the employee
- Terms of settlement agreements
- Final Disposition of Disciplinary Action
- Work Location
- Work Telephone Number
- Badge Number
- Honors or Awards Received
- Payroll timesheets or information to account for time (except to the extent it would reveal employee's reasons for sick or other medical leave)

22

## Data on Applicants



- Name of an applicant is private until the applicant is certified as eligible or until they are determined to be a finalist for a position.
- Once certified or selected as a finalist, the following is public:
  - Veteran status
  - Relevant test scores
  - Rank on eligible list
  - Job history
  - Education and training
  - Work availability

23

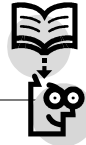
## Private Data on Employees



- Anything not listed specifically as public is private
- Data related to undercover law enforcement officers is private
- Private data can be released when authorized by law (specific statutory authority)
- Private data can be released pursuant to court order
- Private data can be released with written informed consent of individual (forms available)

24

## Confidential Data



- Active investigative data.
- Investigative data relates to civil court action, administrative or arbitration proceedings, worker's compensation claim, unemployment compensation claim or an affirmative action complaint.
- When investigation complete, information is public unless the information is otherwise private.

25

## Can you honor these requests?

- List of names and ethnicity of all employees?
- Birthdays of employees?
- List of email addresses for all university employees?
- A request for a draft of a faculty member's research paper



26

## Can you honor these requests?

- A request from Security for the social security number of an employee?
- A request from a Vice President for the birthdates of all employees in their division?



27

## Tennessee Warning



- When collecting private data from students or employees, you must give the Tennessee Warning. Must inform about the following:
  - Why the data is being collected and how used
  - Whether the person is legally required to provide the data (most often not legally required)
  - Consequences of refusing or supplying
  - FOR SSN – legal authority to request
- Individual can then decide if they want to disclose information or not.
- Failure to give the Tennessee is a violation of the MGDPA.

28

## Do you give the Tennessees in the following circumstances?

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- Investigating misconduct of a student or employee?
- Any disciplinary proceedings?
- When asking for demographic information, e.g. gender, race, age?



29

## Do you give the Tennessees in the following circumstances?

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- When asking for identification information?
- When asking to complete routine forms?



30

## Questions & Answers

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31