



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 12, 2005

Ms. Barbara M. Holthaus
Office of the General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2005-04129

Dear Ms. Holthaus:

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# 223987.

The University of Texas at Austin (the "university") received a request for information relating to (1) Alpha Tau Omega ("ATO") fraternity being placed on probation, and (2) a specified Interfraternity Council (the "IFC") Judicial Board complaint against ATO. You state that the university has previously released all responsive information within its custody and control, with personally identifiable student information redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ *See* Open Records Decision No. 634 (1995) (governmental body may withhold student identifying information from "education records" protected by FERPA without necessity of requesting an attorney general decision). You contend that the remaining requested information is not public information under the Act. We have considered your arguments.² We have also received and considered comments from the requestor. *See* Gov't

¹FERPA 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); *see also* 34 C.F.R. § 99.3 (defining personally identifiable information).

²Pursuant to section 552.303(c) of the Government Code, on April 29, 2005, this office sent a notice to you via facsimile requesting that you provide additional information necessary for this office to render a decision. We received your response on May 6, 2005. Thus, we will address your additional comments.

Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

You raise the issue of whether the IFC is a “governmental body” under section 552.003 of the Government Code. We note, however, that the request for information was submitted to the university, not the IFC. It is not disputed that the university is a governmental body for purposes of the Act. Thus, the issue is whether the requested information is “public information” and thereby subject to the Act. “Public information” is defined under section 552.002 of the Government Code as:

information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:

(1) by a governmental body; or

(2) for a governmental body and the governmental body owns the information or has a right of access to it.

Gov’t Code § 552.002(a). You inform us that the requested information pertains to a specified IFC Judicial Board decision and the subsequent appeal of that decision to the IFC Appellate Board. You indicate that the information at issue was created and is maintained by the IFC, and the university has no ownership rights to that information. You state that the IFC is a self-governing student association that “creates and enforces its own rules and policies separate and apart from the University,” and that the IFC Judicial Board consists entirely of students who adjudicate all complaints brought against an IFC member chapter. While the IFC advisor and Associate Dean of Greek Life are both university employees and voting members of the IFC Appellate Board, you assert that these employees did not access any of the records at issue. Under these circumstances, we do not believe that the information at issue is collected, assembled, or maintained by or for the university. *See id.* Rather, it appears that the information at issue was created for the IFC. Consequently, based on your representations, we conclude that the information at issue is not “public information” for purposes of the Act, and thus is not subject to required disclosure under the Act. *See Gov’t Code § 552.002(a).*

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); *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 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 223987

c: Mr. Robert C. Hill
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