



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 9, 2009

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

OR2009-07898

Dear Ms. Chatterjee:

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# 345737 (OGC # 118850).

The University of Texas Pan-American (the "university") received a request for letters, correspondence, or memoranda received by the university alleging the current university men's basketball coach violated any National Collegiate Athletic Association ("NCAA") or university rules, bylaws, or procedures in his operation of the university's men's basketball program. You state a portion of the requested information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, you assert the requested information is subject to a previous determination issued by this office. In Open Records Letter No. 2009-01695 (2009), this office ruled the university must withhold information pertaining to possible NCAA rules violations by the university basketball program and any internal investigations over a particular time period

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

under section 552.101 of the Government Code as information made confidential by law. You inform us the university's internal inquiry of the men's basketball program has progressed since the prior ruling, but is still pending. You also inform us although one letter was subject to the prior ruling, a second letter the university received was not in existence at the time of the prior ruling. There is no indication the facts and circumstances have changed since the issuance of this prior ruling. Thus, with regard to the information that is identical to the information previously requested and ruled on by this office, we conclude the university must continue to rely on our ruling in Open Records Letter No. 2009-01695 as a previous determination and withhold the information at issue in accordance with that decision. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and circumstances on which prior ruling was based have not changed, first type of previous determination exists where requested information is precisely same information as was addressed in a prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes information is or is not excepted from disclosure). Because the second letter did not exist when the university received the prior request, it was not subject to the prior ruling. Thus, we will consider the university's argument for the second letter.

Section 552.101 of the Government Code exempts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. You inform this office NCAA Bylaw 32.1.1 expressly prohibits the university from releasing details regarding an ongoing investigation of NCAA rules violations. You provided a copy of Bylaw 32.1.1, "Confidentiality," which provides:

32.1.1 Confidentiality. The Committee on Infractions, the Infractions Appeals Committee and the enforcement staff shall treat all cases before them as confidential until they have been announced in accordance with the prescribed procedures. In addition, an institution and any individual subject to NCAA rules involved in a case shall treat that case under inquiry by the enforcement staff as confidential until the case has been announced in accordance with prescribed procedures.

NCAA Bylaw § 32.1.1. *See also* Open Records Decision No. 462 at 7 (1987) (member institution is answerable to NCAA for violations of its rules by student athletes and personnel). Absent specific authority, a governmental body may not promulgate a rule designating information as confidential so as to bring it within section 552.101. Open Records Decision No. 484 (1987). Here, the university states section 9 of article III of the General Appropriations Act requires the university to make "rules and adjustments [that] specifically prohibit violation of [NCAA] or other governing body rules with respect to recruitment of athletes."² You advise us the university's Intercollegiate Athletic Department Compliance Operating Manual specifically mandates adherence to NCAA rules and regulations. You further explain section 131.002 of the Civil Practices and Remedies Code adopts the NCAA rules. *See* Civ. Prac. & Rem. Code § 131.002. Having considered your

²*See* General Appropriations Act, 80th Leg., R.S., ch. 1428, § 9, 2007 Tex. Gen. Laws 4911, 5355.

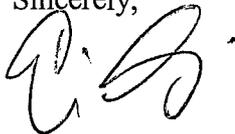
arguments and the documentation you submitted, we find you have shown the university is prohibited by law from releasing the requested information. Therefore, the requested information must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law.³ See Open Records Decision No. 584 at 3 (1991) (provisions of law that prohibit release of information bring it within scope of section 552.101).

In summary, to the extent the submitted information is identical to the information previously requested and ruled on by this office, the university must continue to rely on our ruling in Open Records Letter No. 2009-01695 as a previous determination and withhold the information at issue in accordance with that decision. The remaining information must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law.

This letter ruling is limited to the particular information 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 information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Emily Sitton
Assistant Attorney General
Open Records Division

EBS/rl

Ref: ID# 345737

Enc. Submitted documents

c: Requestor
(w/o enclosures)

³As our ruling is dispositive, we do not address your remaining argument against disclosure.