



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 4, 2009

Mr. Scott A. Kelly
Deputy General Counsel
The Texas A&M University System
A&M System Building, Suite 2079
200 Technology Way
College Station, Texas 77845-3424

OR2009-12568

Dear Mr. Kelly:

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# 354425 (PIR# CC-09-052).

Texas A&M University-Corpus Christi (the "university") received a request for "any response from the NCAA, the NCAA Committee on Infractions, and/or the NCAA Appeals Committee to [the university's] appeal of NCAA sanctions." You state the university has provided some of the requested information to the requestors. You claim that the remaining requested information is excepted from disclosure under section 552.101 of the Government Code. In addition, you assert that release of the remaining requested information may implicate the proprietary interests of the NCAA. Accordingly, you state you notified the NCAA of this request for information and of its right to submit arguments to this office as to why its information should not be released. *See* Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances). We have received comments from the NCAA. We have considered the submitted arguments and reviewed the submitted information.

Initially, we note the university failed to raise your claimed exception within the statutory time period prescribed by section 552.301(b) of the Government Code. *See* Gov't Code § 552.301(b). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the requested information is public. In order to overcome the presumption that the requested

information is public information, a governmental body must provide a compelling reason as to why the information should not be disclosed. *See id.* § 552.302; *City of Dallas v. Abbott*, 279 S.W.3d 806 (Tex. App.—2007, pet. granted); *Simmons v. Kuzmich*, 166 S.W.3d 342 (Tex. App.—Fort Worth 2005, no pet.); *see also* Open Records Decision No. 630 (1994). A compelling reason exists when third-party interests are at stake or when information is confidential by law. Open Records Decision No. 150 (1977). Because section 552.101 of the Government Code, as well as the interests of a third party, can provide compelling reasons to overcome the presumption of openness, we will consider the applicability of this section and the NCAA's arguments to the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. A governmental body may not promulgate a rule designating information as confidential so as to bring it within section 552.101 unless it has been given specific statutory authority. Open Records Decision No. 484 at 2 (1987) (governmental bodies may not by rule or contract render information confidential for purposes of the Act). 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 the recruitment of athletes."¹ Thus, we conclude the university has been given specific authority to enact rules prohibiting the violation of NCAA regulations. We understand the university has done so. You also explain that section 131.002 of the Civil Practices and Remedies Code adopts the NCAA rules. *See generally* Open Records Decision No. 462 at 7 (1987) (member university is answerable to NCAA for violations of NCAA rules by student athletes and personnel). NCAA Bylaw 32.1.1 expressly prohibits an institution subject to NCAA rules from releasing details regarding an ongoing investigation of NCAA rules violations. You provided a copy of NCAA 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. The NCAA informs us that the information at issue pertains to an ongoing investigation by that body. Having considered your argument and the submitted documentation, we find you have shown the university is subject to NCAA Bylaw 32.1.1, which itself makes the information at issue confidential in this instance. Thus, we conclude

¹See General Appropriations Act, Act of May 29, 2009, 81st Leg., R.S., ch. 1424, art. III, sec. 9.

you have demonstrated the university is prohibited by law from releasing the information at issue, and it must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law.² 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).

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, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/cc

Ref: ID# 354425

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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²As our ruling is dispositive, we do not address the NCAA's arguments.