ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 25, 2009

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

OR2009-13560

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# 356935.

The University of Texas Pan-American (the "university") received a request for the findings of the university's internal investigation initiated in Fall of 2008 into possible violations of the university's athletic department, as well as any National Collegiate Athletic Association ("NCAA") letters of inquiry or notices of allegations the university has received since January 2004.[1] 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.[2] You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. In addition, you assert that release of some of the requested information may implicate the 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 § 552.304 (interested party may submit comments stating why information should or should not be released). We have considered the exception you claim and reviewed the submitted information.

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[1]You state, and provide documentation showing, the university sought and received clarification from the requestor. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

[2]The 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.

Initially, you assert the requested information is subject to a previous determination issued by this office. In Open Records Letter No. 2009-10724 (2009), this office ruled the university must withhold NCAA letters of inquiry or notices of allegations received by the university during a specified period of time under section 552.101 of the Government Code as information made confidential by law. You have not indicated the facts and circumstances have changed since the issuance of the 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. 2009-10724 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). To the extent the submitted information is not encompassed by the previous ruling, we will consider your submitted arguments.

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 recruitment of athletes."[3] Thus, we conclude the university has been given specific authority to enact rules prohibiting the violation of NCAA regulations. You advise us the university's Intercollegiate Athletic Department Compliance Operating Manual contains these rules, which specifically mandate the university's compliance with all applicable NCAA rules and regulations. *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 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

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

> enforcement staff as confidential until the case has been announced in accordance with prescribed procedures.

NCAA Bylaw 32.1.1. Having considered your arguments and the documentation you submitted, we find you have shown the university has properly enacted rules subjecting the university to NCAA Bylaw 32.1.1, which itself makes the requested information confidential in this instance. Thus, we conclude you have demonstrated the university is prohibited by law from releasing the remaining requested information, and it must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law.[4] *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. 2009-10724 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, toll free, at (888) 672-6787.

Sincerely,

Sarah Casterline
Assistant Attorney General
Open Records Division

SEC/jb

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[4]As our ruling is dispositive, we need not address your remaining argument against disclosure.

Ref: ID# 356935

Enc. Submitted documents

c: Requestor
(w/o enclosures)