



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 9, 2014

Ms. Ana Vieira
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2014-05852

Dear Ms. Vieira:

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# 519193 (University OGC# 154146).

The University of Texas at Austin (the "university") received a request for all information obtained from or provided to all parties in a specified case. You state you have redacted or withheld certain information in accordance with the Family Educational Rights and Privacy Act ("FERPA"), section 1232(g) of title 20 of the United States Code.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107(2) of the Government Code.² We have considered the exceptions you claim and reviewed the submitted representative sample of information.³

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

²Regardless of whether the university failed to comply with section 552.301 of the Government Code in requesting a ruling, we note sections 552.101 and 552.107(2) of the Government Code are mandatory exceptions that constitute compelling reasons to withhold information sufficient to overcome the presumption of openness caused by a failure to comply with section 552.301. *See* Gov't Code §§ 552.007, .301, .302, .352. Accordingly, we will consider the university's arguments under sections 552.101 and 552.107(2).

³We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

You claim the information you have marked in Tab 5 is excepted from disclosure under section 552.107(2) of the Government Code. Section 552.107(2) provides information is excepted from disclosure if “a court by order has prohibited disclosure of the information.” Gov’t Code § 552.107(2). You state the information you marked is sealed by court order. You have submitted a copy of the court order signed by a judge of the United States District Court for the Western District of Texas, Austin Division. The order states the “[d]efendants’ post-hearing submission and attached affidavit, submitted on May 20, 2008,” are under seal of the court and may not be disclosed by any person “immediately and until further order of the court on notice and hearing.” *Fisher v. Univ. of Tex. at Austin*, No. 1:08-CV-00263-SS (W.D. Tex. May 21, 2008) (order to seal court records). Upon review of the court order and Tab 5, we agree the information you have marked was ordered sealed by court order. You do not state there has been an order of the court authorizing release of the information at issue. Accordingly, the university must withhold the information you marked in Tab 5 under section 552.107(2) of the Government Code.

Section 552.101 of the Government Code excepts “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. Section 552.101 encompasses the doctrine of constitutional privacy. Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual’s interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual’s autonomy within “zones of privacy” which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual’s privacy interests and the public’s need to know information of public concern. *Id.* The scope of information protected is narrower than that under the common law doctrine of privacy; the information must concern the “most intimate aspects of human affairs.” *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

The remaining information contains the identifying information of applicants to the university. Upon review, we conclude this information falls within the zones of privacy. Accordingly, the university must withhold the identifying information of the applicants to the university contained in the information you marked under section 552.101 in conjunction with constitutional privacy. However, we find you have failed to demonstrate how any of the remaining information you marked falls within the zones of privacy or implicates an individual’s privacy interests for purposes of constitutional privacy. Thus, the university may not withhold any of the remaining information you marked under section 552.101 on the basis of constitutional privacy.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the

Texas Supreme Court are delineated in *Industrial Foundation. Id.* at 683. We note the information you seek to withhold has been deidentified. Further, we find none of the information you marked is highly intimate or embarrassing and of no legitimate public concern. Thus, the university may not withhold any of the information at issue under section 552.101 of the Government Code in conjunction with common-law privacy.

In summary, the university must withhold the information you marked in Tab 5 under section 552.107(2) of the Government Code. Additionally, the university must withhold the identifying information of the applicants to the university contained in the information you marked under section 552.101 in conjunction with constitutional privacy. The university must release the remaining information.

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.texasattorneygeneral.gov/open/orl_ruling_info.shtml, 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 may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Lee Seidlits
Assistant Attorney General
Open Records Division

CLS/tch

Ref: ID# 519193

Enc. Submitted documents

c: Requestor
(w/o enclosures)