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ATTORNEY GENERAL OF TEXAS

March 11, 2015

Mr. R. Brooks Moore
Managing Counsel
Governance
The Texas A&M University System
301 Tarrow Street, 6th Floor
College Station, Texas 77840-7896

OR2015-04587

Dear Mr. Moore:

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# 556846.

West Texas A&M University (the "university") received a request for (1) correspondence between university employees and the National Collegiate Athletic Conference ("NCAA") during a specified time period, and (2) "any reports or any such styled documents" received from the NCAA during a specified time period. You state you will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g(a).¹ You claim some of the requested information is not subject to the Act. Additionally, you claim some of the requested information is excepted from disclosure under

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 or student 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. A copy of this letter may be found on the Office of the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

section 552.101 of the Government Code. We have considered your arguments and reviewed the submitted representative sample of information.²

Initially, we note you have marked a portion of the submitted information as not responsive to the instant request for information. This ruling does not address the public availability of non-responsive information, and the university need not release non-responsive information to the requestor.

Next, you state some of the requested information is the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2013-20179 (2013). In that ruling, we determined the university must withhold the submitted information under section 552.101 of the Government Code as information made confidential by law. We have no indication the law, facts, or circumstances on which the prior ruling was based have changed. Thus, the university must rely on Open Records Letter No. 2013-20179 as a previous determination, and continue to withhold the information at issue in accordance with that ruling. *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 that information is or is not excepted from disclosure). However, we will address your arguments for the submitted information, which is not subject to Open Records Letter No. 2013-20179.

The Act is applicable only to “public information.” *See* Gov’t Code §§ 552.002, .021. Section 552.002(a) defines “public information” as

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

- (1) by a governmental body;
- (2) for a governmental body and the governmental body:
 - (A) owns the information;
 - (B) has a right of access to the information; or

²We assume that 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.

(C) spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or

(3) by an individual officer or employee of a governmental body in the officer's or employee's official capacity and the information pertains to official business of the governmental body.

(a-1) Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.

(a-2) The definition of "public information" provided by Subsection (a) applies to and includes any electronic communication created, transmitted, received, or maintained on any device if the communication is in connection with the transaction of official business.

Id. § 552.002(a), (a-1), (a-2). Thus, virtually all the information in a governmental body's physical possession constitutes public information and is subject to the Act. *Id.*; see Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You state the information in Exhibit C was written or maintained by the president of the university and relates to his service on the NCAA Division II President's Council and the NCAA Executive Committee. You further state the university's president's service on these committees is not part of his official duties, and does not pertain to the official business of the university. Based on your representations and our review, we find the information at issue does not constitute public information for purposes of the Act. See Gov't Code § 552.002; see also Open Records Decision No. 635 at 4 (1995) (section 552.002 not applicable to personal information unrelated to official business and created or maintained by state employee involving no or *de minimis* use of state resources). Therefore, the information at issue is not subject to the Act, and the university is not required to release it in response to this request.

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. 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 Act). You state 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. We understand the university has done so. You further state that section 131.002 of the Civil Practices and Remedies Code adopts the NCAA rules. *See* CIV. PRAC. & REM. CODE § 131.002. 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 quote Bylaw 32.1.1, “Confidentiality,” in your brief to this office. This bylaw 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, under consideration by the Committee on Infractions and, if appealed, under consideration by the Infraction Appeals Committee, as confidential until the decisions in such cases have been announced in accordance with prescribed procedures.

NCAA Bylaw 32.1.1. The university informs us Exhibits B-1 and B-2 pertain to an ongoing investigation into NCAA violations involving the university’s football program. The university further argues that disclosure of the information at issue while the investigation is pending would constitute a violation of NCAA rules. Having considered your arguments and reviewed the submitted information, we find you have shown the university is prohibited by law from releasing the information at issue. Therefore, this information must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law. *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, the university must rely on Open Records Letter No. 2013-20179 as a previous determination, and continue to withhold the information at issue in accordance with that ruling. The information in Exhibit C is not subject to the Act, and the university is not required to release this information in response to the request for information. The university must withhold the information in Exhibits B-1 and B-2 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.

³*See* General Appropriations Act, Act of May 20, 2013, 83rd Leg., R.S., ch. 1411, art. III, sec. 9.

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,



Cristian Rosas-Grillet
Assistant Attorney General
Open Records Division

CRG/cbz

Ref: ID# 556846

Enc. Submitted documents

c: Requestor
(w/o enclosures)