



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

May 11, 2015

Ms. Audra Gonzalez Welter
Attorney and Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2015-09064

Dear Ms. Welter:

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# 563093 (OGC#s 160476 and 160523).

The University of Texas at Austin (the "university") received two requests from different requestors. The first request seeks "all records concerning Q, L, and/or B holds for undergraduate applications" for the Fall 2015 semester. The second request seeks "records that pertain to Q holds" for the Fall 2015 semester, including the SAT scores and grade point averages for each hold, but specifically excluding "all personally identifiable information of potential students." You state the university will redact information 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

¹The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that 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 that 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>.

reviewed the submitted representative sample of information.² We have also received and considered comments from one of the requestors. *See* Gov't Code § 552.304 (providing that interested party may submit comments stating why information should or should not be released).

Initially, you indicate, and we agree, the information you have marked is not responsive to either request. The university need not release the non-responsive information you have marked in response to either request, and this ruling will not address that information. Further, we note the second requestor has specifically excluded "all personally identifiable information of potential students" from his request. Thus, the information we have marked is not responsive to the second request. The university need not release the non-responsive information we have marked in response to the second request.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. Section 552.101 encompasses the doctrine of constitutional privacy, which 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)). You contend the responsive information you have marked is confidential under constitutional privacy. Upon review, we find some of the information at issue falls within the zones of privacy. Accordingly, the university must withhold the responsive identifying information of non-enrolled applicants to the university, which we have marked, under section 552.101 of the Government Code on the basis of constitutional privacy. However, we find you have failed to demonstrate any of the remaining responsive information falls within the constitutional zones of privacy or implicates an individual's privacy interests for purposes of constitutional privacy. Therefore, none of the remaining responsive information may be withheld under section 552.101 in conjunction with constitutional privacy. As you raise no other exceptions to disclosure, the remaining responsive information must be released.

²We 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 those records contain substantially different types of information than that submitted to this office.

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,

A handwritten signature in black ink, appearing to read 'Alley Latham', with a long, sweeping horizontal line extending to the right.

Alley Latham
Assistant Attorney General
Open Records Division

AKL/dls

Ref: ID# 563093

Enc. Submitted documents

c: 2 Requestors
(w/o enclosures)