



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

June 25, 2015

Mr. Fernando C. Gomez, J.D., Ph.D.  
Vice Chancellor and General Counsel  
The Texas State University System  
208 East 10<sup>th</sup> Street, Suite 600  
Austin, Texas 78701-2407

OR2015-12627

Dear Mr. Gomez:

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# 568723.

Lamar University (the "university") received a request for specified information pertaining to a named former employee. You state you will provide some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note the university has redacted some of the submitted information. You state the university has redacted student-identifying information from the submitted documents pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>2</sup> However, you do not assert, nor does our review of our

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<sup>1</sup>We 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.

<sup>2</sup>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 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>.

records indicate, the university is authorized to withhold the remaining redacted information without first seeking a ruling from this office. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2000) (previous determinations). Because we can discern the nature of the remaining redacted information, being deprived of the information does not inhibit our ability to make a ruling. Nonetheless, in the future, the university must not redact information from the information it submits to this office unless it is authorized to do so by statute or the information is the subject of a previous determination under section 552.301 of the Government Code. Failure to comply with section 552.301 may result in the information being presumed public under section 552.302 of the Government Code. *See* Gov't Code § 552.302.

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. 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 [National Collegiate Athletic Association] or other governing body rules with respect to recruitment of athletes."<sup>3</sup> Thus, we conclude the university has been given specific authority to enact rules prohibiting the violation of the National Collegiate Athletic Conference ("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 cite Bylaw 19.01.3, "Public Disclosure," in your brief to this office. This bylaw provides:

19.01.3 Public Disclosure. Except as provided in this article, the Committee on Infractions, the Infractions Appeals Committee and the enforcement staff shall not make public disclosures about a pending case until the case has been announced in accordance with prescribed procedures. An institution and any individual subject to the NCAA constitution and bylaws involved in a case, including any representative or counsel, shall not make public disclosures about the case until a final decision has been announced in accordance with prescribed procedures.

NCAA Bylaw 19.01.3. The university informs us the submitted information pertains to an ongoing investigation into NCAA violations involving one of the university's sports programs. The university indicates 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

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

university is prohibited by law from releasing the information at issue. Accordingly, the university must withhold the submitted information under section 552.101 of the Government Code as information made confidential by law.<sup>4</sup> 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.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](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,



Kenny Moreland  
Assistant Attorney General  
Open Records Division

KJM/som

Ref: ID# 568723

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>4</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of the submitted information.