



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 10, 2015

Ms. Cynthia Tynan
Attorney & Public Information Coordinator
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701

OR2015-18916

Dear Ms. Tynan:

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# 578718 (OGC# 162593).

The University of Texas at Austin (the "university") received a request for (1) all e-mails to and from a named individual and one of three other individuals for a specified time period, and (2) all e-mails to or from the named individual for a specified time period that include one of three specified phrases.¹ You state the university will redact information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.² You state

¹We note the university sought and received clarification of the information requested. *See* Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); *see also* *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (if a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The 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 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. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

the university will release some information. You claim some of the submitted information is not subject to the Act or is excepted from disclosure under sections 552.101, 552.107, and 552.111 of the Government Code. We have considered the submitted arguments and reviewed the submitted representative sample of information.³

You contend a portion of the submitted information is not subject to the Act. 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
 - (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.

Id. § 552.002. Thus, virtually all the information in a governmental body’s physical possession constitutes public information and is subject to the Act. *See id.* § 552.002(a)(1); *see also* Open Records Decision Nos. 549 at 4 (1990), 514 at 1-2 (1988). You argue a portion of the submitted information was not created in connection with the transaction of official university business. You further argue the information at issue was not transmitted to, received by, or maintained by any university official or employee in their official capacity. Based on your representations and our review, we find the information at issue does not constitute public information for purposes of section 552.002 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

³We 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.

by state employee involving no or *de minimis* use of state resources). Therefore, this information, which you have marked, 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. This section encompasses information protected by other statutes, including section 51.971 of the Education Code. Section 51.971 of the Education Code provides, in relevant part, the following:

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(e)(1). Section 51.971 defines a compliance program as “a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies[.]” *Id.* § 51.971(a)(1). We note the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.971(a)(2). You state the responsive information relates to a compliance investigation involving the university’s Student Services Department within its athletics department. You inform us the compliance investigation is reviewing all procedures and policies affecting the athletic department’s academic guidance and resources, including admissions, tutoring, course selection, and other areas of service. Based on your representations and our review, we agree the responsive information pertains to the university’s compliance program for purposes of section 51.971. *See id.* § 51.971(a). You inform this office the responsive information pertains to an ongoing compliance investigation. You also represent release of the information at this time would interfere with, and potentially compromise, the investigation. Accordingly, we conclude the university must withhold the responsive information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.⁴

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.

⁴As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

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 "Ramsey Abarca". The signature is written in a cursive, flowing style.

Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/dls

Ref: ID# 578718

Enc. Submitted documents

c: Requestor
(w/o enclosures)