



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

September 30, 2015

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

OR2015-20522

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# 581426 (SO-15-069).

Texas A&M University (the "university") received a request for all correspondence between specified individuals during a specified time period regarding admissions, applicants, or prospective applicants. You state the university redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.¹ You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

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>.

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

Section 552.114(b) of the Government Code provides,

Information is confidential and excepted from the requirements of [the Act] if it is information in a student record at an educational institution funded wholly or partly by state revenue. This subsection does not prohibit the disclosure or provision of information included in an education record if the disclosure or provision is authorized by 20 U.S.C. [s]ection 1232g or other federal law.

See Act of May 29, 2015, 84th Leg., R.S., ch. 828, § 1, 2015 Tex. Sess. Law Serv. 2479, 2479 (Vernon) (to be codified as an amendment to Gov't Code § 552.114(b)).³ Section 552.114(a) defines a student record to include “information in a record of an applicant for admission to an educational institution[.]” *See* Act of May 29, 2015, 84th Leg., R.S., ch. 828, § 1, 2015 Tex. Sess. Law Serv. 2479, 2479 (Vernon) (to be codified as an amendment to Gov't Code § 552.114(a)). We understand the university is an educational institution funded wholly or partly by state revenue. In this instance, the requestor seeks information regarding both applicants and prospective applicants to the university. To the extent the submitted information pertains to applicants of the university, we find this information is in a student record for section 552.114 purposes. Accordingly, the university must withhold any applicant's student record in its entirety under section 552.114(b) of the Government Code.⁴ However, to the extent the submitted information pertains to a prospective applicant, we will address your argument under section 552.101 of the Government Code in conjunction with constitutional privacy.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101. Section 552.101 of the Government Code also 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;

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987)*.

⁴As our ruling is dispositive, we need not address your argument against disclosure of this information. We note section 552.114(d) of the Government Code authorizes a governmental body to redact information covered under section 552.114(b) of the Government Code without requesting a decision from this office under the Act. *See* Act of May 29, 2015, 84th Leg., R.S., ch. 828, § 1, 2015 Tex. Sess. Law Serv. 2479, 2479 (Vernon) (to be codified at Gov't Code § 552.114(d)).

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)). To the extent the requested information pertains to prospective applicants to the university, we find the types of information you marked falls within the zones of privacy. Accordingly, the university must withhold the types of information you marked of any prospective applicants under section 552.101 of the Government Code on the basis of constitutional privacy.

In summary, the university must withhold any applicant’s student record in its entirety under section 552.114(b) of the Government Code. The university must withhold the identifying information of any prospective applicants to the university under section 552.101 of the Government Code on the basis of constitutional privacy. Any remaining information must be released.

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,



Mili Gosar
Assistant Attorney General
Open Records Division

MG/akg

Ref: ID# 581426

Enc. Submitted documents

c: Requestor
(w/o enclosures)