



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 11, 2017

Ms. Cynthia Tynan  
Senior Attorney & Public Information Coordinator  
Office of General Counsel  
The University of Texas System  
201 West 7th Street, Suite 600  
Austin, Texas 78701-2901

OR2017-00762

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# 641224 (OGC# 172476).

The University of Texas at Austin (the "university") received a request for information pertaining to a named individual. You state the university will redact 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>1</sup> 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>2</sup>

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<sup>1</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: <https://www.texasattorneygeneral.gov/files/og/20060725usdoe.pdf>.

<sup>2</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.

Initially, you inform us some of the submitted information was the subject of previous requests for rulings, as a result of which this office issued Open Records Letter Nos. 2016-27186 (2016) and 2017-00572 (2017). In Open Records Letter No. 2016-27186, we concluded the university must withhold certain information under section 552.101 of the Government Code in conjunction with sections 51.971(e)(1) and 51.971(c) of the Education Code; the university may withhold certain information under sections 552.107(1) and 552.111 of the Government Code; the university must withhold certain information under section 552.117(a)(1) of the Government Code if the individuals whose information is at issue timely requested confidentiality under section 552.024 of the Government Code and if a governmental body does not pay for the cellular telephone service; and the university must release the remaining information at issue. In Open Records Letter No. 2017-00572 we determined the university must continue to rely on Open Records Letter No. 2016-27186 as a previous determination and withhold or release the information previously ruled upon in accordance with that ruling and must withhold the remaining submitted information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code. We have no indication the law, facts, or circumstances on which the prior rulings were based have changed. Thus, the university must continue to rely on Open Records Letter Nos. 2016-27186 and 2017-00572 as previous determinations and withhold or release the identical information at issue in accordance with those rulings.<sup>3</sup> *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 consider your arguments for the submitted information not subject to the previous rulings.

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. 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:

(a) In this section:

(1) “Compliance program” means 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, including matters of:

(A) ethics and standards of conduct;

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining arguments against disclosure of this information.

- (B) financial reporting;
- (C) internal accounting controls; or
- (D) auditing.

(2) "Institution of higher education" has the meaning assigned by Section 61.003.

...

(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(a), (e)(1). You state 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 information at issue pertains to an ongoing compliance investigation into allegations of misconduct being conducted by the university's Office of Legal Affairs in conjunction with the university's athletics department. Based on your representations and our review, we agree the information at issue pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a). You also represent release of the information at this time would interfere with, and potentially compromise, the ongoing investigations. Accordingly, we conclude the university must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.<sup>4</sup>

In summary, the university must continue to rely on Open Records Letter Nos. 2016-27186 and 2017-00572 as previous determinations and withhold or release the information previously ruled upon in accordance with those rulings. The university must withhold the remaining information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.

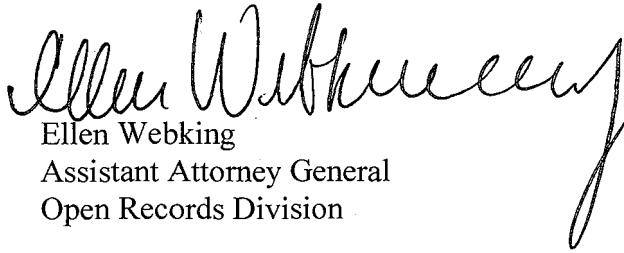
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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<sup>4</sup>As 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](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,



Ellen Webking  
Assistant Attorney General  
Open Records Division

EW/bw

Ref: ID# 641224

Enc. Submitted documents

c: Requestor  
(w/o enclosures)