



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

February 22, 2019

Ms. Jennifer Burnett
Senior Attorney and Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2019-05109

Dear Ms. Burnett:

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# 751295 (OGC# 186135).

The University of Texas Southwestern Medical Center (the "university") received a request for records from a specified database containing student athlete injury information. You state you will release some information to the requestor. You claim portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. Additionally, you state release of some of the submitted information may implicate the proprietary interests of Medical Innovation Labs ("Medical Innovation"). Accordingly, you state, and provide documentation showing, you notified Medical Innovation of the request for information and of its right to submit arguments to this office as to why the information at issue should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exception you claim and reviewed the submitted information.

You inform us some of the requested information was the subject of a previous request for a ruling, as a result of which this office issued Open Records Letter No. 2018-17347 (2018). In that ruling, we determined, in part, the university may withhold the database information under section 552.104(a) of the Government Code. You state the law, facts, and

circumstances on which the prior ruling was based have not changed. Therefore, for the information that is identical to the information previously requested and ruled upon by this office, the university may continue to rely on Open Records Letter No. 2018-17347 as a previous determination and withhold or release the identical information in accordance with that ruling. *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 prior attorney general ruling, ruling is addressed to same governmental body, and ruling concludes that information is or is not excepted from disclosure). To the extent the submitted information is not subject to Open Records Letter No. 2018-17347, we will address arguments against its disclosure.

Next, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from Medical Innovation explaining why the submitted information should not be released. Therefore, we have no basis to conclude Medical Innovation has a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold the submitted information on the basis of any proprietary interest Medical Innovation may have in the information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987).

You state release of the database records may make it possible to identify student athletes who have suffered a concussion, and thus, implicate these students' rights to common-law privacy. Upon review, we find portions of the information at issue, which we have indicated, satisfy the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the university must withhold the information we have indicated under section

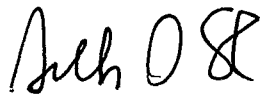
552.101 of the Government Code in conjunction with common-law privacy. However, we find the university has not demonstrated any of the remaining information at issue is highly intimate or embarrassing and not of legitimate public concern. Thus, the university may not withhold any of the remaining information in conjunction with common-law privacy.

In summary, the university may continue to rely on Open Records Letter No. 2018-17347 as a previous determination and withhold or release the identical information in accordance with that ruling. The university must withhold the information we have indicated under section 552.101 of the Government Code in conjunction with common-law privacy. The university must release the remaining information.

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,



Deborah Southerland
Attorney
Open Records Division

DS/eb

Ref: ID# 751295

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Third Party
(w/o enclosures)