



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

June 5, 2019

Ms. Ana Vieira Ayala
Assistant General Counsel, Legal Expert & Public Information Coordinator
The University of Texas System
210 West 7th Street
Austin, Texas 78701

OR2019-14857

Dear Ms. Ayala:

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# 769086 (OGC Nos. 189621, 189640, and 189683).

The University of Texas at Austin (the "university") received three requests from three different requestors for records and communications pertaining to specified entities and named individuals during stated periods of time.¹ You state the university is releasing some responsive information to two of the requestors. You state the university is withholding student-identifying information pursuant to the Family Educational Rights and Privacy Act

¹We note the university received clarification of the information requested with respect to one of the present requests. See Gov't Code § 552.222(b) (stating if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used); *City of Dallas v. Abbott*, 304 S.W.3d 380 (Tex. 2010) (holding when governmental entity, acting in good faith, requests clarification of unclear or overbroad request for public information, ten-business-day period to request attorney general opinion is measured from date request is clarified or narrowed).

("FERPA"), section 1232g of title 20 of the United States Code.² You claim the submitted information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information, some of which consists of a representative sample.³ We have also received and considered comments submitted by one of the requestors. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released).

Initially, we note the three requests received by the university differ in the types of information sought pertaining to the specified entities and named individuals, as well as the stated time periods for which records are sought. Thus, the university need not release information to any of the requestors that is not responsive to their respective requests.

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. 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:

(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;

(B) financial reporting;

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. A copy of this letter may be found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

³We 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.

(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 inform us the submitted information concerns "an ongoing compliance investigation . . . regarding student-athlete admissions" being conducted by the university's Office of Vice President for Legal Affairs. You also inform us the investigation is being conducted in response to an indictment against numerous individuals and was initiated to assess and ensure compliance with applicable laws, rules, regulations, and policies. You explain the submitted information was collected for the pending investigation. You state release of the information at issue at this time would interfere with and could compromise the ongoing investigation by making it "more difficult for the [u]niversity to receive accurate information from the individuals relevant to the pending investigation." Based on your representations and our review, we agree the information at issue pertains to a university's compliance program for purposes of section 51.97, and find release of the submitted information would interfere with the ongoing compliance investigation. Accordingly, we conclude the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.⁴

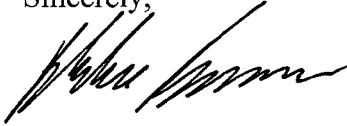
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

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/>

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

[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 "Blake Brennan", written in a cursive style.

Blake Brennan
Attorney
Open Records Division

BB/mo

Ref: ID# 769086

Enc. Submitted documents

c: 3 Requestors
(w/o enclosures)