



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

September 9, 2019

Ms. Jennifer Burnett  
Senior Attorney & Public Information Coordinator  
The University of Texas System  
210 West 7th Street  
Austin, Texas 78701-2901

OR2019-25145

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# 784767 (OGC No. 191375).

The University of Texas at Austin (the "university") received a request for information pertaining to a named individual and a specified investigation.<sup>1</sup> You state the university will release some information. You state you have redacted some information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the

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<sup>1</sup> You state the university sent the requestor a cost estimate of charges pursuant to section 552.2615 of the Government Code. *See* Gov't Code § 552.2615. The estimate of charges required the requestor to provide a deposit for payment of anticipated costs under section 552.263 of the Government Code. *See id.* § 552.263(a). You inform us the requestor modified her request in response to the cost estimate. *See id.* § 552.222(b) (governmental body may communicate with requestor for purposes of clarifying or narrowing request); *see also City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when governmental entity, acting in good faith, requests clarification or narrowing of unclear or overbroad request for public information, ten-day period to request attorney general ruling is measured from date request is clarified or narrowed). You state the university sent a second cost estimate in response to the modified request. You inform us the university received a narrowed request in response to the modified cost estimate.

United States Code.<sup>2</sup> You claim 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 information.

Initially, you inform us some of the submitted information, which you marked, was the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2019-14857 (2019). As we have no indication the law, facts, and circumstances on which the prior ruling was based have changed, the university must continue to rely on that ruling as a previous determination and withhold the information you marked in accordance with Open Records Letter No. 2019-14857. *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).

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;

(B) financial reporting;

(C) internal accounting controls; or

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<sup>2</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 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 <https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/20060725-USDOE-FERPA.pdf>.

(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 explain the university is an institution of higher education for purposes of section 61.003 of the Education Code. *See id.* § 51.97(a)(2). You state the submitted information concerns a legal review by the university’s Office of Vice President for Legal Affairs (the “office”) regarding student-athlete admissions in light of the recent arrest of the named individual. Further, you state the matters under review pertain to standards of conduct of university employees. Based on these representations, we find the information at issue relates to an investigation conducted under the university’s compliance program for purposes of section 51.971. *See id.* § 51.97(a)(1). You explain the information was collected or produced in a compliance program investigation and release of this information would interfere with, and potentially compromise, the ongoing investigation. 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.

In summary, the university must continue to rely on Open Records Letter No. 2019-14857 as a previous determination and withhold the information you marked in accordance with that ruling. 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.

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 <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink that reads "Britni Ramirez". The signature is written in a cursive, slightly slanted style.

Britni Ramirez  
Assistant Attorney General  
Open Records Division

BR/mo

Ref: ID# 784767

Enc. Submitted documents

c: Requestor  
(w/o enclosures)