



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

December 16, 2020

Mr. Jeffrey D. Palmer
Associate General Counsel
University of Houston System
4302 University Drive, Room 311
Houston, Texas 77204-2028

OR2020-31484

Dear Mr. Palmer:

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# 858219.

The University of Houston (the "university") received a request for certain information pertaining to student athletes during defined periods of time. You claim the submitted information is not subject to the Act pursuant to section 552.002(d) of the Government Code. You also claim the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the submitted arguments and reviewed the submitted information.

Initially, we note portions of the submitted information, which we have marked, are not responsive to the instant request because they do not pertain to student athletes. The university need not release non-responsive information in response to this request, and this ruling will not address that information.

Next, we note portions of the responsive information were the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2020-25538 (2020). In that ruling, we concluded the university must release the

¹ Although you also raise section 552.026 of the Government Code as an exception to disclosure, this section is not an exception to public disclosure under the Act. Rather, section 552.026 provides the Act does not require the release of information contained in education records except in conformity with the Family Education Rights and Privacy Act of 1974. Gov't Code § 552.026.

requested information. We have no indication the law, facts, and circumstances on which Open Records Letter No. 2020-25538 was based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, the university must release the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, 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 responsive information is not encompassed by the previous ruling, we will address the submitted arguments.

You assert the responsive information is not subject to the Act pursuant to section 552.002(d) of the Government Code, which provides, as follows:

“Protected health information” as defined by Section 181.006, Health and Safety Code, is not public information and is not subject to disclosure under this chapter.

Gov’t Code § 552.002(d). Section 181.006 of the Health and Safety Code provides, in relevant part, as follows:

[F]or a covered entity that is a governmental unit, an individual’s protected health information:

(1) includes any information that reflects that an individual received health care from the covered entity[.]

Health & Safety Code § 181.006(1). Section 181.001(b)(2)(A) defines “covered entity,” in part, as any person who:

for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site[.]

Id. § 181.001(b)(2)(A). You do not assert the university is a covered entity and you have not explained how the information at issue consists of protected health information. Thus, we find you have failed to demonstrate the applicability of section 181.006 of the Health and Safety Code. Accordingly, we find the information at issue is subject the Act, and the university must release it unless it falls within an exception to public disclosure under the Act. *See* Gov’t Code §§ 552.006, .021, .301, .302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *See id.* § 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). Upon review, we find you have failed to demonstrate any of the responsive information is highly intimate or embarrassing to an identifiable individual and not of legitimate public concern. Thus, the university may not withhold any portion of the responsive information under section 552.101 of the Government Code in conjunction with common-law privacy. As no further exceptions to disclosure have been raised, the university must release the responsive 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 <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,

Jennifer Copeland
Assistant Attorney General
Open Records Division

JC/jxd

Ref: ID# 858219

Enc. Submitted documents

c: Requestor
(w/o enclosures)