



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 19, 2008

Ms. Neera Chatterjee
The University of Texas System
Office of the General Counsel
201 West Seventh Street
Austin, Texas 78701-2902

OR2008-17301

Dear Ms. Chatterjee:

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# 330602.

The University of Texas at Austin (the "university") received a request for information from 2008 related to a named individual and sports agent and recruiting activity that may have resulted in a violation of National Collegiate Athletic Association (the "NCAA") rules or of state or federal law.¹ You state that the university has redacted or withheld some of the responsive information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.² You claim that the remaining requested 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 information.

¹You inform us that the requestor clarified his original request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²The United States Department of Education Family Compliance Office has informed this office that FERPA does not permit state and local educational authorities to disclose to this office, without parental consent, unredacted, personally identifiable information contained in education records for the purposes of review in the open records ruling process under the Act. Because our office is prohibited from reviewing education records to determine whether appropriate redactions under FERPA have been made, we will not address the applicability of FERPA to any of the submitted information. Such determinations under FERPA must be made by the educational authority in possession of the education record.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” You inform this office that NCAA rule 13.10.2 expressly prohibits the university from releasing details regarding a prospective student-athlete, including the athletic ability or possible contribution to the university team of a prospect or the likelihood of the prospect signing with the university. You provided a copy of Rule 13.10, “Publicity.” Rule 13.10.2 provides in part:

13.10.2. Comments Before Signing. Before the signing of a prospective student-athlete to a National Letter of Intent or an institution’s written offer of admission and/or financial aid, a member institution may comment publicly only to the extent of confirming its recruitment of the prospective student athlete. The institution may not comment generally about the prospective student-athlete’s ability or the contribution that the prospective student-athlete might make to the institution’s team; further, the institution is precluded from commenting in any manner as to the likelihood of the prospective student-athlete’s signing with that institution.

See also Open Records Decision No. 462 at 7 (1987) (member institution is answerable to NCAA for violations of its rules by student athletes and personnel). You also point out that section 9 of article III of the General Appropriations Act requires the university to make “rules and adjustments [that] specifically prohibit violation of [NCAA] or other governing body rules with respect to recruitment of athletes.”³ You advise us that sections 13:04:1-13:04:5 of the university’s Policy and Procedure Manual for Intercollegiate Athletics specifically mandate adherence to NCAA rules and regulations. You further explain that section 131.002 of the Civil Practices and Remedies Code adopts the NCAA rules. Having considered your arguments and the documentation you submitted, we find that you have shown that the university is prohibited by law from releasing the requested information. Therefore, the requested information must be withheld from disclosure under section 552.101 of the Government Code as information made confidential by law. *See* Open Records Decision No. 584 at 3 (1991) (provisions of law that prohibit release of information bring it within scope of section 552.101). As we are able to make this determination under section 552.101, we need not consider your remaining arguments.

This letter ruling is limited to the particular records 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 records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the

³*See* General Appropriations Act, Act of June 15, 2007, 80th Leg., R.S., ch. 1428, art. III, § 9, 2007 Tex. Gen. Laws, 4911, 5355.

governmental body wants to challenge this ruling, the governmental body must file suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such a challenge, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3). If the governmental body does not file suit over this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

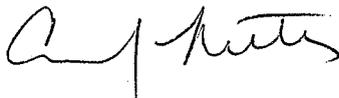
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can challenge that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/cc

Ref: ID# 330602

Enc. Submitted documents

c: Requestor
(w/o enclosures)