



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 8, 2011

Ms. Tammye Curtis-Jones  
Associate General Counsel  
Texas Southern University  
3100 Cleburne Avenue  
Houston, Texas 77004

OR2011-09716

Dear Ms. Curtis-Jones:

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# 423216.

Texas Southern University (the "university") received a request for all correspondence between the National Collegiate Athletic Association (the "NCAA") and the university with regards to any investigation into possible infractions involving the university's football and basketball programs. You state some of the requested information has been redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.117, 552.136, and 552.137 of the Government Code.<sup>2</sup> You also inform us that release of the requested information may

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") 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 purpose of our review in the open records ruling process under the Act. The DOE has determined that FERPA determinations must be made by the educational authority in possession of the education records. We have posted a copy of the letter from the DOE to this office on the Attorney General's website: <http://www.oag.state.tx.us/open/20060725usdoe.pdf>. Accordingly, we do not address your claim under section 552.114 of the Government Code. See Gov't Code §§ 552.026 (incorporating FERPA into the Act), .114 (excepting from disclosure "student records"); Open Records Decision No. 539 (1990) (determining same analysis applies under section 552.114 and FERPA).

<sup>2</sup>Although you raise section 552.111 of the Government Code, you make no arguments to support this exception. Therefore, we assume you have withdrawn your claim that this section applies to the submitted information. Additionally, section 552.026 of the Government Code is not an exception to disclosure. Rather, section 552.026 provides that the Act does not require the release of information contained in education records except in conformity with FERPA. Gov't Code § 552.026.

implicate the interests of the NCAA. Accordingly, you inform us you notified the NCAA of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.304 (interested party may submit comments stating why information should or should not be released). We have received comments from the NCAA. We have considered the submitted arguments and reviewed the submitted representative sample of information.<sup>3</sup>

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. A governmental body may not promulgate a rule designating information as confidential so as to bring it within section 552.101 unless it has been given specific statutory authority. Open Records Decision No. 484 at 2 (1987) (governmental bodies may not by rule or contract render information confidential for purposes of the Act). Here, the university states 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."<sup>4</sup> Thus, we conclude the university has been given specific authority to enact rules prohibiting the violation of NCAA regulations. You advise us that the university's Department of Athletics Compliance Manual specifically mandates adherence to NCAA rules and regulations. *See generally* Open Records Decision No. 462 at 7 (1987) (member university is answerable to NCAA for violations of NCAA rules by student athletes and personnel). You further explain that section 131.002 of the Civil Practices and Remedies Code adopts the NCAA rules. *See* TEX. CIV. PRAC. & REM. CODE § 131.002. NCAA Bylaw 32.1.1 expressly prohibits an institution subject to NCAA rules from releasing details regarding an ongoing investigation of NCAA rules violations. You provided a copy of Bylaw 32.1.1, "Confidentiality," which provides:

32.1.1 Confidentiality. The Committee on Infractions, the Infractions Appeals Committee and the enforcement staff shall treat all cases before them as confidential until they have been announced in accordance with the prescribed procedures. In addition, an institution and any individual subject to NCAA rules involved in a case shall treat that case under inquiry by the enforcement staff as confidential until the case has been announced in accordance with prescribed procedures.

NCAA Bylaw 32.1.1. The university informs us that the information at issue pertains to an ongoing investigation into NCAA violations involving the university's men's basketball and

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<sup>3</sup>We assume the "representative sample" of information 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 those submitted to this office.

<sup>4</sup>*See* General Appropriations Act, Act of May 29, 2009, 81st Leg., R.S., ch. 1424, art. III, sec. 9.

football programs. The university further informs us that the investigation has not been announced in accordance with NCAA procedures. 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 information at issue. Therefore, the information at issue 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 the remaining submitted arguments.

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.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), 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 must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Sean Nottingham  
Assistant Attorney General  
Open Records Division

SN/bs

Ref: ID# 423216

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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