



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 22, 2011

Ms. Karin W. Riley
Associate General Counsel
University of North Texas System
1901 Main Street, Suite 216
Dallas, Texas 75201-5222

OR2011-10540

Dear Ms. Riley:

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# 424946 (UNT PIR No. 11-094).

The University of North Texas (the "university") received a request for specified 2010-2011 professor evaluation information, including the evaluation questions and the evaluation answer records completed by students. You state the university has provided some of the requested information to the requestor. You also state the university has withheld some of the requested information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g.¹ You claim the requested evaluation questions are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.²

¹The 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 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 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>.

²We 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.

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. Section 552.101 encompasses information made confidential by other statutes, such as section 51.914 of the Education Code, which provides, in part:

(a) In order to protect the actual or potential value, the following information is confidential and is not subject to disclosure under [the Act], or otherwise:

(1) all information relating to a product, device, or process, the application or use of such a product, device, or process, and all technological and scientific information (including computer programs) developed in whole or in part at a state institution of higher education, regardless of whether patentable or capable of being registered under copyright or trademark laws, that have a potential for being sold, traded, or licensed for a fee[.]

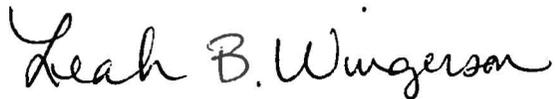
Act of May 29, 2011, 82nd Leg., R.S., S.B. 5, § 6.04 (to be codified as an amendment to Educ. Code § 51.914(a)). As noted in Open Records Decision No. 651, the legislature is silent as to how this office or a court is to determine whether particular scientific information has “a potential for being sold, traded, or licensed for a fee.” Open Records Decision No. 651 at 9 (1997). Furthermore, whether particular scientific information has such a potential is a question of fact this office is unable to resolve in the opinion process. *See id.* Thus, this office has stated in considering whether requested information has “a potential for being sold, traded, or licensed for a fee,” we will rely on a university’s assertion the information has this potential. *See id. But see id.* at 9 (stating university’s determination information has potential for being sold, traded, or licensed for fee is subject to judicial review).

You state the requested evaluation questions are part of the university’s Student Evaluation of Teaching Effectiveness (“SETE”) survey instrument, and relate to a product, device, or process developed by the university. You explain the SETE evaluation questions are “assessment items [that] relate to a process that was developed by [the university] after significant research and development through the [university’s] Office of Institutional Research and Effectiveness.” You further state the SETE evaluation questions at issue have the potential for being sold, traded, or licensed for a fee to other universities and educational institutions. Based on your representations and our review, we conclude the requested evaluation questions are confidential under section 51.914 of the Education Code, and the university must withhold the information under section 552.101 of the Government 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 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,

A handwritten signature in black ink that reads "Leah B. Wingerson". The signature is written in a cursive style with a small dot above the letter 'i' in "Wingerson".

Leah B. Wingerson
Assistant Attorney General
Open Records Division

LBW/agn

Ref: ID# 424946

Enc. Submitted documents

c: Requestor
(w/o enclosures)