



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 3, 2011

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

OR2011-16182

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# 435166.

Texas Southern University (the "university") received a request for information sent by the National Collegiate Athletic Association (the "NCAA") to the university over a specified time period that is considered the "Notice of Allegations."¹ 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.² You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also inform us that release of the requested information may implicate the interests of

¹We note the university received clarification regarding this request. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or over-broad request for public information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

²The 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).

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 considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 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."³ 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* 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 the information at issue pertains to an ongoing investigation into NCAA violations involving the university's sports programs. The university further informs us the investigation has not been announced in accordance with NCAA procedures. Having considered your arguments and the documentation you submitted, we find you have shown the university is prohibited by law from releasing the information at issue. Therefore, the submitted 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

³*See* General Appropriations Act, Act of May 29, 2009, 81st Leg., R.S., ch. 1424, art. III, sec. 9.

information bring it within scope of section 552.101). As our ruling is dispositive, we need not address your remaining argument against disclosure.

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,



Jennifer Luttrall
Assistant Attorney General
Open Records Division

JLU/dls

Ref: ID# 435166

Enc. Submitted documents

c: Requestor
(w/o enclosures)

Mr. David Price
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(w/o enclosures)