



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

December 8, 2011

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

OR2011-18107

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# 438341.

Texas Southern University (the "university") received a request to view a copy of the National Collegiate Athletic Association (the "NCAA") academic athletic report regarding possible violations on the part of the university's athletics department. 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 section 552.101 of the Government Code. You also inform us that release of this information may implicate the interests of the NCAA. Accordingly, you notified the NCAA of its right to submit arguments to this office as to why the submitted 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.

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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>.

Initially, we note the submitted information may have been the subject of a previous request for information, in response to which this office issued Open Records Letter No. 2011-16182 (2011). In that decision, we ruled the information at issue was excepted from disclosure under section 552.101 of the Government Code as information made confidential by law. We have no indication the law, facts, or circumstances on which the previous ruling was based have changed. Accordingly, to the extent the submitted information is identical to the information previously requested and ruled upon by this office, we conclude the university must continue to rely on Open Records Letter No. 2011-16182 as a previous determination and withhold the identical information in accordance with that ruling. *See* Open Records Decision No. 673 (2001) (so long as law, facts, and 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 submitted information was not responsive to the previous request for information and is not encompassed by the prior ruling, we will consider your arguments against disclosure.

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 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>2</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* 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

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<sup>2</sup>*See* General Appropriations Act, Act of May 29, 2009, 81st Leg., R.S., ch. 1424, art. III, sec. 9.

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 submitted information 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 provided, we find you have shown the university is prohibited by law from releasing the submitted information. Therefore, this 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).<sup>3</sup>

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,



Kenneth Leland Conyer  
Assistant Attorney General  
Open Records Division

KLC/agn

Ref: ID# 438341

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

Mr. David Price

Vice President of Enforcement

National Collegiate Athletic Association

P.O. Box 6222

Indianapolis, Indiana 46206-6222

(w/o enclosures)

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<sup>3</sup>As our ruling is dispositive, we need not address your remaining argument against disclosure.