



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 4, 2012

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

OR2012-13958

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# 464128 (OGC# 144615).

The University of Texas at Austin (the "university") received a request for certain documentation and e-mail correspondence pertaining to a specified study. You state the university has redacted information 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 that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state the proprietary interests of certain third parties might be implicated. Accordingly, you state, and provide documentation showing, you notified the Witherspoon Institute, the Lynde and Harry Bradley Foundation, and KNW Networks, Inc. d/b/a Knowledge Networks of the request and of their right to submit arguments to this office explaining why their information should not be released. *See* Gov't Code § 552.305

---

<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>.

(permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in certain circumstances). We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Initially, we note an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, we have not received comments from any of the third parties explaining why the submitted information should not be released. Therefore, we have no basis to conclude any of the third parties have a protected proprietary interest in the submitted information. *See id.* § 552.110; Open Records Decision Nos. 661 at 5-6 (1999) (to prevent disclosure of commercial or financial information, party must show by specific factual evidence, not conclusory or generalized allegations, that release of requested information would cause that party substantial competitive harm), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3. Accordingly, the university may not withhold any of the submitted information based upon the interests of the third parties.

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. This exception encompasses information other statutes make confidential, such as section 51.971 of the Education Code, which provides, in part:

(e) Information is excepted from disclosure under [the Act] if it is collected or produced:

(1) in a compliance program investigation and releasing the information would interfere with an ongoing compliance investigation[.]

Educ. Code § 51.971(e)(1). Section 51.971 defines a compliance program as a process to assess and ensure compliance by officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies. Educ. Code § 51.971(a)(1). You assert the submitted information pertains to an investigation into scientific misconduct that was initiated as a result of a complaint made to the university. You state the investigation is

---

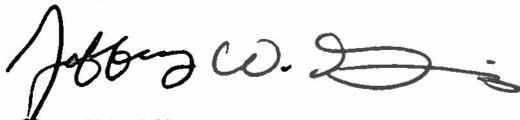
<sup>2</sup>We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

being conducted by the university's Research Integrity Officer. You further state the purpose of the review is to assess and ultimately ensure that the university has complied with all applicable law, rules, regulations, and policies. Based on your representations and our review, we agree the submitted information pertains to the university's compliance program for purposes of section 51.971. *See id.* § 51.971(a). You inform this office the submitted information pertains to an ongoing compliance investigation by the university. You also represent release of the information at this time would interfere with, and potentially compromise, that investigation. Accordingly, we conclude the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education Code.<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,



Jeffrey W. Giles  
Assistant Attorney General  
Open Records Division

JWG/tch

Ref: ID# 464128

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

---

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

**Mr. Luis E. Tellez**  
**President**  
**The Witherspoon Institute**  
**16 Stockton Street**  
**Princeton, New Jersey 08540**  
**(w/o enclosures)**

**Mr. Daniel Schmidt**  
**Vice President for Program**  
**The Lynde and Harry Bradley Foundation**  
**1241 North Franklin Place**  
**Milwaukee, Wisconsin 53202-2901**  
**(w/o enclosures)**

**Mr. J. Michael Dennis**  
**Executive Vice President**  
**Government and Academic Research**  
**KNW Networks, Incorporated**  
**2100 Geng Road, Suite 210**  
**Palo Alto, California 94303**  
**(w/o enclosures)**