ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 20, 2012

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

OR2012-15013

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# 465726 (U.T. OGC #144692).

The University of Texas at Austin (the "university") received a request for copies of all original research records and materials related to a specified published study; all communications between a named professor and The Witherspoon Institute (the "Institute") regarding the specified study for a specified time period; and a complete accounting of fund disbursements for the specified study, including how much the named professor "paid himself out of the grants." You state the university is releasing some of the requested information. You also state the university has redacted student-identifiable information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.[1] You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also believe release

[1]We note the United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office that FERPA does not permit a state educational agency or institution to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). The DOE has determined that FERPA determinations must be made by the educational institution from which the education records were obtained. A copy of the DOE's letter to this office may be found on the Office of the Attorney General's website: http://www.oag.state.tx.us/open/20060725usdoe.pdf.

of the submitted information may implicate the interests of third parties. Accordingly, you state, and provide documentation demonstrating, the university notified the Institute, KNW Networks, Inc. d/b/a Knowledge Networks, and The Lynde and Harry Bradley Foundation of the request for information and of their right to submit arguments stating why their information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); 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.[2] We have also received and considered comments submitted by the requestor. *See* Gov't Code § 552.304 (providing that interested party may submit written comments regarding why information should or should not be released).

Initially, you state much of the submitted information was the subject of a previous request for information, as a result of which this office issued Open Records Letter No. 2012-13958 (2012). In that ruling, we determined the university must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 51.971 of the Education Code. We have no indication there has been any change in the law, facts, or circumstances on which the previous ruling was based. 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 rely on Open Records Letter No. 2012-13958 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 is not encompassed by the previous 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. This exception encompasses information other statutes make confidential, such as section 51.971 of the Education Code, which provides, in part:

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[2]This letter ruling assumes that the submitted representative sample of information is truly representative of the requested information as a whole. This ruling does not reach, and therefore does not authorize, the withholding of any other requested information to the extent that the other information is substantially different than that submitted to this office. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

> (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. *Id.* § 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 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.[3]

In summary, to the extent the submitted information is identical to the information previously requested and ruled upon in Open Records Letter No. 2012-13958 , the university must rely on that ruling as a previous determination and withhold the identical information in accordance with that ruling. The university must withhold any remaining information under section 552.101 of the Government Code in conjunction with section 51.971(e)(1) of the Education 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

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[3]As our ruling is dispositive, we need not address your remaining arguments against disclosure.

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,

Lindsay E. Hale
Assistant Attorney General
Open Records Division

LEH/ag

Ref: ID# 465726

Enc. Submitted documents

c: Requestor
(w/o enclosures)

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